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Supreme Court, U.S.
FILED

JUN 3 1985

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IN THE
SUPREME COURT OF THE UNITED STATES

Case No. 84-6621

ROBERT DALE HENDERSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONSE TO PETITION FOR WRIT OF
CERTIORARI TO THE SUPREME COURT
OF FLORIDA

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IN THE
SUPREME COURT OF THE UNITED STATES
Case No. 84-6681

ROBERT DALE HENDERSON,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

RESPONSE TO PETITION FOR WRIT OF
CERTIORARI TO THE SUPREME COURT
OF FLORIDA

QUESTIONS PRESENTED

I. WHETHER THE FACTS PRESENTED RE-
QUIRE THAT EDWARDS V. ARIZONA, 451
U.S. 447 (1961) BE REVISITED.

II. WHETHER A STATUTE ALLOWING
PERSONS AGED 70 YEARS OLD OR OLDER
TO BE EXCUSED FROM JURY SERVICE
UPON THEIR REQUEST ESTABLISHES A
VIOLATION OF PETITIONER'S RIGHT
TO A FAIR AND IMPARTIAL JURY.

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OPINION BELOW

Petitioner correctly recites that the opinion of the Florida Supreme Court is reported as 463 So.2d 196 (Fla. 1985). A copy of the opinion is attached hereto for the convenience of this court, as appendix pp. 1-6.

JURISDICTION OF THE SUPREME COURT

Respondent does not dispute the discretionary jurisdiction of this court as set forth by petitioner, but does deny that any special or important reason has been presented which warrants the exercise thereof.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner invokes the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution as relevant to this case.

STATEMENT OF THE CASE

Respondent accepts petitioner's statement of the case.

STATEMENT OF THE FACTS

Respondent generally accept petitioner's Statement of the Facts, but would add further particular facts surrounding the initiation of exchanges between petitioner and the authorities, as discussed in the Edwards question raised in Point I. The entirety of the pertinent testimony is set out in appendix pp. A-7-57 (Investigator R.W. Bakker) and pp. A-58-77 (Detective William Hord).

Respondent has also included the evidentiary hearing pertinent to petitioner's second point (regarding the jury venire) as pp. A-79-93 of the appendix.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

- I. THE FACTS OF THIS CASE PRESENT NO NEW ISSUE REQUIRING THAT EDWARDS V. ARIZONA, 451 U.S. 447 (1981) BE REVISITED; THERE WAS NO NEED TO SUPPRESS PETITIONER'S SEVERAL CONFESSIONS.

Petitioner's claim of an Edwards violation, in addition to being unfounded, presents no special or important reason for Edwards to be revisited; nor do the facts of this case present any new issue for this Court to decide or clarify. During the trip from Charlotte County to Putnam County, petitioner initiated various conversation on various incidental topics, including subtle comments indicating a desire to discuss the homicides (to which he had already confessed, and had turned himself in to Charlotte deputies) (A-19-20; A-21; A-54-55). The deputies declined to pick up on any of petitioner's comments about guns and hitchhikers, and consciously avoided discussing any matter relating to the homicides. (A-39; A-41; A-43; A-54). When the deputies stopped to check in with headquarters before taking petitioner to the jail, petitioner inquired as to what would be happening next (A-60). Thus, throughout the journey and at the specific time in question, petitioner initiated further communications with the officers. Oregon v. Bradshaw, 452 U.S. 1039 (1983). When Deputy Hord told him he was going to the Putnam County jail, petitioner looked surprised; his expression prompted Deputy Hord to ask "What it was he was trying to tell me." (A-60-61). This general, non-specific clarifying inquiry cannot be regarded as "interrogation," in that, objectively, no incriminating matter is being sought. See generally, Rhode Island v. Innis, 446 U.S. 291 (1980). When petitioner stated he wanted to help the deputies find the hitchhikers' bodies, he was advised "in great detail that he did not have to discuss that with [the deputies], and that if he did, he was going against the advice of the Public Defender Woodard." (A-22; A-49).

Petitioner signed a waiver of rights form (A-78), led the deputies to the bodies, and made various statements sought later to be suppressed.

There is no issue presented regarding the knowing and voluntary nature of the confession in this case; petitioner confessed several times to various murders, turned himself in to authorities, spoke to the press, and otherwise amply demonstrated his overt desire to confess his guilt and clear his conscience. Petitioner does not contend otherwise here. Thus, petitioner must rely on an assertion that the officers initiated interrogation, attempting to invoke a disputable "per se" rule that even knowing and voluntary statements must be suppressed where further communication, exchanges or conversations are initiated by the police. However, under Bradshaw, petitioner himself initiated the exchange here; further, no "interrogation" took place under Innis. These issues have already been addressed on facts very similar to those presented here, and no unsettled question of federal law is raised by this petition.

II. THIS COURT SHOULD DECLINE TO GRANT CERTIORARI BECAUSE THE PETITION ON ITS FACE DEMONSTRATES CONSTITUTIONALLY PERMISSIBLE GROUNDS FOR EXCUSING JURORS, AND DOES NOT ALLEGE ANY FACTUAL PREDICATE TO SUPPORT PETITIONER'S CLAIMS.

Petitioner's allegation that his jury was not drawn from a fair cross section of the community is frivolous on its face, for failing to even allege a factual basis sufficient to meet the tri-partite test of Duren v. Missouri, 439 U.S. 357 (1979) and Taylor v. Louisiana, 419 U.S. 522 (1975). There are no statistics indicating persons 70 years of age or older constitute a constitutionally significant class, nor is the percentage of such group in the venire revealed. Petitioner does not appear to contest the remaining permissible exclusions under section 40.013, Florida Statutes (1981); virtually all of such challenges have been resolved against petitioner. See generally, Reed v. Wainwright, 587 F.2d 260 (5th Cir. 1979). Voluntary

exclusion for persons over the age of 70 years of age is obviously rationally based; voluntary exclusion for persons over 65 was implicitly allowable in Duren.

Petitioner's assertion that delegation of authority to the clerk for excusals was "unauthorized" under the Florida Statute is patently a matter of state law. No federal right or interest is implicated in the procedure.

CONCLUSION

Petitioner presents no issue warranting review by this Honorable Court.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES
MAY TERM, 1985

ROBERT DALE HENDERSON,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

CERTIFICATE OF SERVICE

I, ELLEN D. PHILLIPS, hereby certify that I am a member of the bar of the Supreme Court of the United States and that I have served copies of the Respondent's Brief in Opposition to the Petition for Writ of Certiorari to the Supreme Court of Florida in the above case on counsel for the petitioner by depositing same in the United States mail, first class mail, postage prepaid, addressed as follows:

Christopher S. Quarles
Assistant Public Defender
Seventh Judicial Circuit of Florida
112 Orange Avenue, Suite A
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All parties required to be served have been served.
Done this 31st day of May, 1985.

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IN THE
SUPREME COURT OF THE UNITED STATES
MAY TERM, 1985

ROBERT DALE HENDERSON,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

AFFIDAVIT

I, ELLEN D. PHILLIPS, Counsel for Respondent and a member of the Bar of this Court, depose and say:

1. That the enclosed Brief in Opposition to Petition for Writ of Certiorari was mailed first-class postage prepaid at the Downtown Station of the United States Post Office, Daytona Beach, Florida on May 31, 1985.

2. That the original Petition for Writ of Certiorari was received by the undersigned on May 1, 1985.

3. That the Brief in Opposition to the Petition for Writ of Certiorari was mailed within the permitted time and was therefore timely filed under Rule 28, Section 2, of the rules of this Court.

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federate, would be waiting in ambush to rob the victims of the rest of their money. This briefly gives an indication of the character of the Defendant, Tommie L. Randolph.

In *Gibson v. State*, 351 So.2d 948 (Fla. 1977), Delores Walker and another young woman picked up two Brazilian seamen and invited them to their house to spend the night. This was at the suggestion of the defendant and another individual who planned to "roll" the seamen. Shortly after midnight the Brazilian seamen got into a car with the defendant and the two women. After they traveled a short distance Walker drove down a dark street and stopped the car. Gibson directed the two men to get out of the car and hand over their money. As one seaman got out of the car offering his money, Gibson shot him twice in the head. Gibson was twenty-eight years of age at the time of the crime. The trial court found that the murder was committed during the commission of an armed robbery, was committed for pecuniary gain, and was especially heinous, atrocious and cruel. This Court held that the trial judge improperly combined the armed robbery with the motive of pecuniary gain. Nevertheless the death sentence was upheld.

In *Foster v. State*, 369 So.2d 928 (Fla. 1979), two young girls met defendant and the victim at a bar. They knew defendant but the victim was a stranger. The defendant and the girls had planned for one of them to have sex with the victim and make some money. The vehicle was parked in a deserted area and after some conversation concerning compensation the victim and one of the girls began to disrobe. Defendant suddenly began hitting the victim and accusing him of taking advantage of his sister. Defendant then held a knife to the victim's throat and cut his neck, causing it to bleed profusely. The victim was still breathing so defendant took a knife and cut the victim's spine. The girls and defendant then drove off in the victim's Winebago and found the victim's wallet underneath a mattress. They split the money. The jury recommended a death sentence

and the trial judge found that the murder was committed while defendant was engaged in the commission of a robbery and that the capital felony was especially heinous and atrocious. In our opinion we said:

Before imposing the death sentence, the trial judge considered three psychiatric reports (with which defendant's attorney was familiar) and found that there were no mitigating circumstances sufficient to overcome the heinous nature of the homicide. The defendant committed the homicide in an effort to fulfill his intentions and complete his desire. i.e., "ripping the victim off." An elderly gentleman had agreed to go out and have some fun, but the price of such activity was his life. Defendant showed no compassion when he cut the victim's throat, beat him, dragged him into the woods, and cut his spine with a knife.

Foster v. State, 369 So.2d 928, 931

I would deny the petition for rehearing because it violates our Rules of Appellate Procedure. However, if we reconsider the sentence, other similar cases in which the death sentence was upheld would lead us to an affirmation of the reasoned judgment of judge and jury in the case before us.

BOYD, C.J., and ALDERMAN, J., concur.



Robert Dale HENDERSON, Appellant.

v.

STATE of Florida, Appellee.

No. 63094.

Supreme Court of Florida.

Jan. 10, 1985.

Rehearing Denied Feb. 28, 1985.

Defendant was convicted in the Circuit Court in and for Hernando County, L.R.

Huffstetler, Jr., J., of three counts of first-degree murder, and he appealed. The Supreme Court, Boyd, C.J., held that: (1) there was sufficient evidence to support finding that defendant knowingly and intelligently waived his right to have counsel present when making his statements; (2) testimony concerning defendant's admission to being wanted in other states bore no relevance to any material fact at issue, but error in denying motion to exclude reference to crimes committed in other jurisdictions was harmless; (3) photographs of victims' partially decomposed bodies were relevant; (4) there was no error in denial of motion for mistrial; (5) provisions of statute pertaining to permissible excusals from jury service did not violate Sixth Amendment; (6) evidence that victims were bound and gagged and shot one by one execution-style supported finding that murders were especially heinous, atrocious or cruel and were committed in cold, calculated and premeditated manner without pretense of moral or legal justification; and (7) Florida's death penalty law is constitutional.

Affirmed.

1. Criminal Law §412.2(4)

When accused asks to see counsel, interrogation must cease; however, there is nothing to prevent accused from changing his mind and volunteering further information.

2. Criminal Law §412.2(5)

Stricter standard for showing that accused has knowingly and intelligently waived previous request for counsel is met when accused voluntarily executes written waiver.

3. Criminal Law §414

There was sufficient evidence, including written waivers signed before making statements in question, to support finding that defendant knowingly and intelligently waived his right to have counsel present when making these statements.

4. Criminal Law §369.1, 1169.11

Testimony concerning defendant's admission to being wanted in other states bore no relevance to any material fact at issue, but error in denying motion to exclude reference to crimes committed in other jurisdictions was harmless, where amount of evidence against defendant was overwhelming.

5. Criminal Law §438(6)

Photographs of victims' partially decomposed bodies were relevant to show location of victims' bodies, amount of time that passed between murders and time when bodies were found, and manner in which they were clothed, bound and gagged.

6. Criminal Law §238(1)

Persons accused of crimes can generally expect that any relevant evidence against them will be presented in court; test of admissibility is relevancy.

7. Criminal Law §1144.12

It is not to be presumed that gruesome photographs will so inflame jury that they will find accused guilty in absence of evidence of guilt; rather, all jurors are presumed to be guided by logic and thus are aware that pictures of murder victims do not alone prove guilt of accused.

8. Criminal Law §867

There was no error in denial of mistrial when trial judge, in advising jury of probable duration of trial, suggested that there would be second phase of trial concerned with sentencing and, upon objection by defense, gave curative instruction indicating that he only meant to estimate maximum period of time to be set aside for trial and had not made any judgment about what the evidence was likely to show.

9. Jury §33(1.1)

Provisions of statute pertaining to permissible excusals from jury service did not violate Sixth Amendment, despite contention that statute operated to deny defendant right to be tried by jury drawn from venire representing "cross-section" of com-

munity. West's F.S.A. § 40.013; U.S.C.A. Const. Amend. 6.

10. Homicide ¶354

Evidence that victims were bound and gagged and shot one by one execution-style supported finding of aggravating circumstances that murders were especially heinous, atrocious or cruel and were committed in cold, calculated and premeditated manner without pretense of moral or legal justification.

11. Criminal Law ¶1206.1(2)

Florida's death penalty law is constitutional.

12. Homicide ¶354

Trial court properly found that there were no mitigating circumstances sufficient to outweigh aggravating circumstances supporting death sentence for three counts of first-degree murder.

13. Homicide ¶354

Three sentences of death for three counts of first-degree murder were appropriate under law established in similar cases.

James B. Gibson, Public Defender, and Brynn Newton, Asst. Public Defender, Daytona Beach, for appellant.

Jim Smith, Atty. Gen., and Mark C. Messer, Asst. Atty. Gen., Daytona Beach, for appellee.

BOYD, Chief Justice.

This cause is before the Court on appeal of judgments of conviction on three counts of first-degree murder. Appellant Robert Dale Henderson was sentenced to death for each of the three capital offenses. Therefore, this Court has jurisdiction of the appeal. Art. V, § 3(b)(1), Fla. Const. Upon reviewing the record and considering appellant's arguments on appeal, we find no reversible error and affirm the convictions and sentences of death.

Appellant's murder convictions are based upon the deaths of three hitchhikers in Hernando County, Florida. Henderson

turned himself in to the sheriff's office in Charlotte County, Florida, on February 6, 1982. He confessed to murdering three hitchhikers in northern Florida and to several other unrelated murders. He then requested counsel and signed a "Notice of Defendant's Invocation of the Right to Counsel."

On February 10, 1982, two Putnam County sheriff's deputies took custody of Henderson for an unrelated murder and were transporting him to Putnam County by automobile when Henderson volunteered to show them where the bodies of the three hitchhikers were. They advised him of his rights, after which he signed a waiver of rights form and led them to the field where the bodies were discovered.

The following June, a Hernando County detective took custody of Henderson in Putnam County for the purpose of transporting him to Hernando County to be tried for the murders of the three hitchhikers. At first Henderson said he did not want to talk because he had already given his statement to the other deputies. Later during the ride Henderson changed his mind and, after executing a written waiver, talked about the details of the murders.

Henderson filed two pretrial motions to suppress the statements he made to the Putnam County deputies and to the Hernando County detective. The motions alleged that the statements were elicited from him after he had invoked his right to remain silent by requesting an attorney. After holding an evidentiary hearing, the trial court denied the motions.

At trial a deputy sheriff of Charlotte County testified that he was responding to a call reporting an automobile burglary when Henderson motioned to him. When the officer approached, Henderson said he wanted to give himself up for murder and that he was wanted in several states. The officer testified that Henderson surrendered a bag containing a .22 caliber revolver which Henderson said was the murder weapon. After the officer arrested Henderson and advised him of his constitution-

al rights, Henderson said that he had killed three hitchhikers in north Florida.

Another Charlotte County deputy sheriff testified that he interviewed Henderson after advising him of his constitutional rights. According to this witness, Henderson said that he shot all three hitchhikers in the head and dumped their bodies in a remote area south of Perry, Florida.

One of the Putnam County sheriff's deputies testified about Henderson's showing him the location of the bodies. The Hernando County detective testified that when he was transferring Henderson from Putnam to Hernando County, Henderson agreed to talk and gave details of the murders. A transcript of Henderson's confession was read to the jury. According to the transcript, Henderson said he picked up the hitchhikers, two male and one female, near Panama City and became concerned when he heard two of them talking about killing someone to get some money. Henderson was quoted as saying that he bound and gagged the three hitchhikers and shot them each in the head with a .22 caliber revolver.

There was substantial medical and scientific testimony corroborating Henderson's confessions. The medical examiner testified that the victims, two male and one female, had each died of a gunshot wound to the head. A firearms expert testified that the bullet fragments found in the victims had the same rifling characteristics as did bullets shot from the .22 caliber revolver found in Henderson's possession when he was arrested. Crime scene investigators testified that the victims' bodies were found bound and gagged with tape in the manner described in Henderson's statements.

The defense rested without presenting any evidence. The jury found Henderson guilty of three counts of first-degree murder.

At the penalty phase of the trial, the state presented evidence of Henderson's prior convictions for two counts of first-degree murder. The state also called the Hernando County detective who testified

that Henderson told him he had no regrets and that if he had his life to live over again, he would not change anything. The defense presented evidence that Henderson was abused as a child and that he showed the police the location of the victims' bodies so they could be buried.

The jury recommended that Henderson be sentenced to death. The trial judge adopted the jury's recommendation and found as aggravating circumstances that Henderson had previously been convicted of a violent felony; that the murders were especially heinous, atrocious, or cruel; and that they were committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. The judge found there was no evidence of any statutory mitigating circumstances and that the nonstatutory mitigating circumstances presented were of little if any weight.

[1-3] Henderson's first point on appeal claims error in the denial of his pretrial motions to suppress the statements he made to the Putnam County deputy and the Hernando County detective. Henderson claims that these statements were improperly elicited from him after he had requested the assistance of counsel. It is true that when an accused asks to see counsel, interrogation must cease. *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). However, there is nothing to prevent an accused from changing his mind and volunteering further information. "The stricter standard for showing that an accused has knowingly and intelligently waived a previous request for counsel is met when the accused voluntarily executes a written waiver." *Cannady v. State*, 427 So.2d 723, 729 (Fla.1983). In this case Henderson signed written waivers before making the statements in question. We therefore conclude that there is sufficient evidence to support the finding that he knowingly and intelligently waived his right to have counsel present when making these statements.

Next Henderson argues that the trial judge erred in denying in part his motion in limine to exclude references to unrelated crimes committed in other jurisdictions. In response to Henderson's motion, the state averred that the only evidence of collateral crimes it anticipated introducing was the statement Henderson made to the arresting officer that he was turning himself in for murder and that he was wanted in several states. The trial court ruled that this statement was admissible.

[4] We agree with Henderson's contention that the testimony concerning his admission to being wanted in other states bore no relevance to any material fact at issue in this case. Hence his motion to exclude all references to crimes committed in other jurisdictions should have been granted. However, we find that the error was harmless and could not possibly have affected the outcome of the case. The amount of evidence against Henderson is simply overwhelming. There were at least four confessions to four different police officers. There was also substantial circumstantial evidence linking him to the crime and corroborating his confessions. Given the magnitude of this evidence, we do not believe that the jury was unduly or improperly influenced by the evidence that Henderson admitted to being wanted in other states.

[5-7] Next Henderson argues that the trial court erred by allowing into evidence gruesome photographs which he claims were irrelevant and repetitive. We find that the photographs, which were of the victims' partially decomposed bodies, were relevant. Persons accused of crimes can generally expect that any relevant evidence against them will be presented in court. The test of admissibility is relevancy. *Adams v. State*, 412 So.2d 850 (Fla.), cert. denied, 459 U.S. 882, 103 S.Ct. 182, 74 L.Ed.2d 148 (1982); *Straight v. State*, 397 So.2d 903 (Fla.), cert. denied, 454 U.S. 1022, 102 S.Ct. 556, 70 L.Ed.2d 418 (1981). Those whose work products are murdered human beings should expect to be confronted by photographs of their accomplish-

ments. The photographs were relevant to show the location of the victims' bodies, the amount of time that had passed from when the victims were murdered to when their bodies were found, and the manner in which they were clothed, bound and gagged. It is not to be presumed that gruesome photographs will so inflame the jury that they will find the accused guilty in the absence of evidence of guilt. Rather, we presume that jurors are guided by logic and thus are aware that pictures of the murdered victims do not alone prove the guilt of the accused. We therefore conclude there was no error in allowing the photographs into evidence. *Aldridge v. State*, 351 So.2d 942 (Fla.1977), cert. denied, 439 U.S. 882, 99 S.Ct. 220, 68 L.Ed.2d 194 (1978); *Jackson v. State*, 359 So.2d 1190 (Fla.1978), cert. denied, 439 U.S. 1102, 99 S.Ct. 881, 69 L.Ed.2d 63 (1979); *Swan v. State*, 322 So.2d 485 (Fla.1975).

[8] Henderson argues that the trial judge erred when, in advising the jury of the probable duration of the trial, he suggested that there would be a second phase of the trial concerned with sentencing. Because a sentencing phase would only be required upon conviction of a capital offense, appellant argues that the statement indicated to the jury that the judge thought appellant would be found guilty of at least one of the charged first-degree murder counts. Upon the raising of an objection by the defense, the judge gave a curative instruction indicating that he only meant to estimate the maximum period of time to be set aside for the trial and had not made any judgment about what the evidence was likely to show. Defense counsel moved for a mistrial and now argues that the denial of the motion was reversible error. We find the argument to be completely without merit.

[9] Henderson also argues that several of the provisions of section 40.013, Florida Statutes (1981), pertaining to permissible excusals from jury service, operated to deny him the right to be tried by a jury drawn from a venire representing a "cross-section" of the community. See *Taylor v.*

Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). He relies on *Alachua County Court Executive v. Anthony*, 418 So.2d 264 (Fla.1982). That decision held that the exemption for mothers with small children was faulty on equal protection grounds for not treating similarly situated fathers the same way. The sixth amendment was not involved in that case and we do not read it as announcing any right of defendants that would support appellant's argument here. We find appellant's challenge to be without merit. *Hitchcock v. State*, 413 So.2d 741 (Fla.), cert. denied, 459 U.S. 960, 108 S.Ct. 274, 74 L.Ed.2d 213 (1982); *McArthur v. State*, 351 So.2d 972 (Fla.1977).

[10] With respect to his sentence, Henderson argues that the trial judge erred in finding that the murders were especially heinous, atrocious or cruel. Henderson claims that the murders were not heinous, atrocious, or cruel because the victims died instantaneously from single gunshots to their heads. This argument overlooks the fact that the victims were previously bound and gagged. They could see what was happening and obviously experienced extreme fear and panic while anticipating their fate. We therefore conclude that this aggravating circumstance applies. *White v. State*, 403 So.2d 331 (Fla.1981), cert. denied, — U.S. —, 103 S.Ct. 3571, 77 L.Ed.2d 1412 (1983); *Knight v. State*, 338 So.2d 201 (Fla.1976).

Appellant also argues that the court erred in finding that the murders were committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. We hold that there was sufficient evidence to support the trial judge's finding of this factor. Henderson rendered the victims helpless by binding their ankles with tape. He then coldly proceeded to shoot them one by one execution-style.

[11] Finally Henderson argues that Florida's death penalty law is unconstitutional. However, all his arguments have previously been refuted by this Court on a

number of occasions and therefore do not merit any further discussion.

[12] In conclusion, the properly established aggravating circumstances are:

1. Appellant had previously been convicted of two counts of first-degree murder.
2. The murders were all heinous, atrocious, and cruel.
3. The murders were all committed in a cold, calculated, and premeditated manner without pretense of moral or legal justification.

The trial court properly found that there were no mitigating circumstances sufficient to outweigh the aggravating circumstances found.

[13] We therefore affirm the convictions on three counts of first-degree murder. Finding that the three sentences of death are appropriate under the law established in similar cases, we affirm them also.

It is so ordered.

ADKINS, OVERTON, ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., concur.



Raymond KOON, Appellant,

v.

STATE of Florida, Appellee.

No. 83322.

Supreme Court of Florida.

Jan. 10, 1985.

Rehearing Denied March 4, 1985.

Defendant was convicted in the Circuit Court, Collier County, Charles T. Carlton, J., of first-degree murder, and direct appeal

1 THEREUPON,

2 R. W. BAKKER,

3 a witness called on behalf of the State of Florida, being
4 first duly sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. McCABE:

7 Q State your name, please, sir.

8 A R. W. Bakker.

9 Q And how are you employed?

10 A I'm an investigator for the Putnam County Sheriff's
11 office.

12 Q And how long have you been a police officer?

13 A About 20 years.

14 Q All right. Is it Investigator Bakker?

15 A Yes, sir.

16 Q Investigator Bakker, were you involved in the
17 investigation of a homicide of one Dr. Murray Ferderber?

18 A Yes, sir.

19 Q And how were you involved in that?

20 A I was assigned that case, along with another
21 officer.

22 Q All right. And, just briefly, did you go to the
23 scene of that particular crime?

24 A Yes, sir, I did.

25 Q And describe for the Court, please -- and that was

2206

A-7

1 Putnam County, Florida?

2 A Yes, sir.

3 Q Describe for the Court, in essence, what the scene
4 was like when you first arrived there.

5 A It was a double wide trailer with an attached fence
6 -- I mean a screen enclosure on the front. We entered the
7 double wide trailer through a sliding glass door. By the
8 sliding glass door was a chair with the back to the sliding
9 glass door. In the chair was Dr. Ferderber sitting upright
10 with his head slumped over and a phone book in his hand.

11 MR. SPRINGSTEAD: Your Honor, if I may interrupt,
12 I believe there are other witnesses also in the back of
13 the courtroom. I would like to invoke the rule at this
14 time.

15 THE COURT: All right. The rule has been invoked.
16 Those of you that are here in any matters involving
17 Robert Dale Henderson, if you'll remain outside the
18 courtroom and not discuss any testimony with anyone
19 other than counsel.

20 BY MR. McCABE:

21 Q Did your investigation reveal the cause of death
22 for Dr. Ferderber?

23 A Yes, sir.

24 Q And what was that?

25 A A single gunshot wound to the back of the head.

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A-8

1 Q All right. Were you able to determine caliber?

2 A It was small in caliber and resembled that of a
3 .22.

4 Q Now, did your investigation -- well, first of all,
5 what was the approximate date of that crime?

6 A I didn't bring that report.

7 Q All right. Well, let me direct your attention --

8 A That was prior to --

9 Q Let me direct your attention, then, to February 6,
10 1982. Did you receive communications from Charlotte County
11 on that date regarding that homicide?

12 A My department did, correct.

13 Q All right. And subsequently did you become aware
14 of that?

15 A Yes, sir. I was instructed to go to Charlotte
16 County.

17 Q All right. Now, what information was relayed to
18 you regarding what had occurred in Charlotte County?

19 A I was informed that a subject had turned himself in
20 to the Charlotte County authorities and admitted to two
21 homicides in Putnam County.

22 Q All right. What particular description of the
23 homicide in Putnam County was given to you based on the
24 information from Charlotte County?

25 A An elderly doctor in the south end and an older

2208

A-9

1 woman in a western shop.

2 Q Now, did you review your records to see if you had
3 homicides that coincided with the information from Charlotte
4 County?

5 A Both were investigated on the same day.

6 Q And regarding the elderly doctor on the south side,
7 were you given any facts or any details of what the Charlotte
8 County authorities had found out from the person they had
9 in custody?

10 A Other than an elderly doctor, which was a retired
11 doctor. No one knew he was a doctor except someone who might
12 have been in the house.

13 Q Okay. He was not -- he didn't have a sign out front
14 with "doctor's office" or anything?

15 A He wasn't a practicing doctor, no, sir.

16 Q He was retired.

17 A He was retired.

18 Q Okay. And who was it that supposedly was admitting
19 to this particular offense?

20 A Robert Dale Henderson.

21 Q Based on that information, what did you do?

22 A I proceeded to Charlotte County.

23 Q Well, did you get a warrant first?

24 A The first time I went down there, I didn't have a
25 warrant.

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A-10

1 Q Okay. What did you do in Charlotte County the
2 first --

3 A The first time?

4 Q Yes.

5 A I was hoping to interview Mr. Henderson, but at that
6 time I was instructed that he wasn't talking to anybody.

7 Q Okay. What did you do then?

8 A I informed my authorities -- my captain of Mr.
9 Henderson's decision and proceeded back to Putnam County.

10 Q Okay. And what steps did you take at that point?

11 A On the 9th a warrant was issued by Judge Warren,
12 at which time Chris Hord and myself proceeded on back down
13 to Charlotte County.

14 Q Let me show you what has been attached to the
15 defendant's second motion to suppress, which purports to be a
16 complaint affidavit.

17 MR. McCABE: Mr. Springstead, can I refer to this
18 based on the fact that you filed it?

19 MR. SPRINGSTEAD: Yeah, fine. I just -- that's
20 part of my motion. I think it's unsealed from the
21 Clerk's Office from Putnam County.

22 BY MR. McCABE:

23 Q Do you recognize that? It says, "This is the
24 affidavit ---"

25 A We consider it 751, complaint affidavit requesting a

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A-11

1 warrant.

2 Q All right. Did you sign that?

3 A Yes, sir, I did.

4 Q All right. And you swore to the things that were
5 contained in there?

6 A I swore to the things contained in there, yes.
7 Also noted that I was also sworn again to it at the State
8 Attorney's office.

9 Q Okay. And, briefly, reading from this, does this
10 sound familiar to you? It charges that "Robert Dale Henderson
11 did unlawfully from a premeditated design effect the death of
12 a human being killed and murdered, Murray Bernard Ferderber,
13 a human being, by shooting Ferderber in the head." Is that
14 what you swore to?

15 A Yes, sir.

16 Q You felt you had probable cause?

17 MR. SPRINGSTEAD: Objection. I think that's an
18 opinion, Your Honor. It's irrelevant in these
19 proceedings. It's up to the Court to determine whether
20 or not there was probable cause. This officer is just to
21 testify to what's contained in the affidavit.

22 MR. McCABE: Your Honor, I didn't ask if he had
23 probable cause. I asked if he felt he had probable cause

24 MR. SPRINGSTEAD: Well, it's the opinion that I
25 object to, Your Honor. It's irrelevant.

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A-12

1 MR. SPRINGSTEAD: Your Honor, at this time I'm going
2 to object to anything he might have told Judge Warren
3 that's not contained within the document that he has
4 already identified as Form 751. The basis for that
5 motion is based on the Constitution and the case law
6 that interprets that Constitution that indicates that
7 oral testimony cannot be used to determine probable
8 cause. The Constitution indicates that no warrant shall
9 be issued except on probable cause supported by affidavit
10 people describing places or persons or things to be
11 seized. It indicates in interpreting that that it requires
12 a written affidavit, and so I object to any oral
13 testimony that may have transpired with Judge Warren.
14 I think the State's relegated to the limitations of
15 Form 751.

16 MR. McCABE: Your Honor, I think we're way ahead of
17 ourselves on legal argument. Briefly, the appropriate
18 Florida rule of criminal procedure and the appropriate
19 statute both permit oral testimony. The case that
20 Mr. Springstead is relying on is the constitutional
21 basis that deals with a search warrant. It does not
22 deal with an arrest warrant. The plain reading of the
23 constitutional provision that he just recited says that
24 it must specifically -- the affidavit must specifically
25 state the person or persons to be seized. This affidavit

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A-14

1 does state the person or persons to be seized with
2 particularity. I think I'm permitted by statute in the
3 rule -- and I will cite this for you if the Court desires
4 -- to elicit the oral testimony taken by Judge Warren.

5 MR. SPRINGSTEAD: I just want to preserve the
6 objection. Your Honor. You know, I guess Mr. McCabe
7 wants to proceed.

8 THE COURT: All right. I will overrule your
9 objection at this time.

10 BY MR. McCABE:

11 Q Did Judge Warren place you under oath?

12 A Yes, sir.

13 Q What did you tell him in addition to the affidavit
14 that you submitted?

15 A I told him that we had received information from
16 Charlotte County as to one Robert Dale Henderson admitting to
17 a homicide in Putnam County naming the elderly doctor that
18 had been shot, and we knew that the weapon that had been
19 recovered was a .22 caliber weapon, which he had turned in.

20 Q Henderson turned it in?

21 A Yes, sir. And based on the evidence of the other
22 homicide, only a person would have known both of them because
23 it hadn't been in the paper until -- or just the local paper
24 at that time that it was an elderly woman in a western store,
25 as well as an old doctor in his house.

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A-15

Q Let's delve into the elderly woman in the Western store. I understand you didn't get a warrant for that particular offense at that time, but what were the essential facts of that?

A That she was also shot in the head, but at the first autopsy the doctor -- pathologist didn't find a hole.

Q So there hadn't been any publicity at all about the elderly woman at the western store being shot?

A Right, being murdered.

Q Was it subsequently determined that she had been shot?

A After Mr. Henderson telling Charlotte County.

Q Was there a new autopsy done because of that?

A Yes, sir.

Q Now, were there any other elderly doctors that had been shot recently up there in Putnam County that this admission could have referred to --

A No, sir.

Q -- on the south side?

A On the south end. I consider the south end to be the east side of the St. Johns River there in an area called Satsuna or Palatka area.

Q I'm going to show you what's also attached to the defendant's motion to suppress, which purports to be a copy of an arrest warrant, and ask you to look at that.

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A-16

1 A Yes, sir. This is the article that was typed up at
2 the State Attorney's office.

3 Q Is that the arrest warrant that was issued by Judge
4 Warren?

5 A Yes, sir.

6 Q After having had the arrest warrant issued, what
7 steps did you take?

8 A Both Investigator Chris Hord and myself left for
9 Charlotte County.

10 Q All right.

11 A And we spent the night halfway down. We arrived
12 the morning of the 10th at the Charlotte County Sheriff's
13 office.

14 Q All right. And what did you do at the Charlotte
15 County Sheriff's office?

16 A I contacted Investigator Lucas.

17 Q And tell me what happened.

18 A I gave him the warrant. He called Mr. Henderson
19 out of the cell, read him the warrant, told him he had another
20 hearing to go to, at which time the Charlotte County
21 authorities transported him to a hearing at the courthouse.

22 Q Did you go to the hearing at the courthouse?

23 A Yes, sir.

24 Q What happened there?

25 A He was read the warrant by the judge, at which time

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A-17

1 he was remanded to our authority -- to our custody.

2 Q So the judge in Charlotte County read him that
3 warrant and turned him over to y'all?

4 A Yes, sir.

5 Q And is Mr. Henderson in the courtroom today?

6 A Yes, sir, he is.

7 Q Would you point him out, please?

8 A The gentleman with the beard (indicating). Well,
9 the second without the jacket.

10 Q Thank you. All right. What did you and Detective
11 Bord do with Henderson now that he was in your custody?

12 A At which time I read him his rights and we
13 transported him.

14 Q Did you read him his rights from a card?

15 A Yes, sir.

16 Q And what were you transporting him in?

17 A I transported him in our county car.

18 Q Okay. Now, about how far is it from Punta Gorda,
19 which, I believe, is the county seat of Charlotte County, to
20 Palatka, which, I believe, is the county seat of Putnam
21 County?

22 A Four and a half - five hours, something like that.
23 I don't recall the exact time.

24 Q So you started out on your journey back. Right?

25 A Yes, sir.

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A-18

1 Q Tell me what occurred during the journey back.

2 A We just carried on just a normal conversation.

3 Whatever Mr. Henderson wanted to talk about, we talked about.

4 Q Now, had you been presented with any document
5 purportedly signed by Mr. Henderson indicating that he didn't
6 want to talk to you?

7 A Yes, sir, we were.

8 Q All right. I show you what has been attached to
9 defendant's first motion to suppress, which purports to be a
10 notice of defendant's invocation to the right of counsel, and
11 ask you to look that over.

12 A Yes, sir. This was given to us by Mr. Woodard, the
13 Public Defender representing Mr. Henderson.

14 Q All right. What was the basic gist of that?

15 A The basic gist was that he did not -- he had talked
16 to his attorney and that he elected not to discuss any
17 criminal matter with me or anybody else.

18 Q Okay. And you were aware of this?

19 A Yes, sir.

20 Q Well, when you started back on the road to Palatka,
21 did you try to talk to him?

22 A Not about any criminal matter at all. He struck up
23 plenty of conversations. We talked about hunting, camping,
24 and just anything that was in the air except any criminal
25 matter.

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A-19

1 Q Just casual conversation?

2 A Yes, sir.

3 Q Now, did something occur on the way back to Palatka
4 indicating to you that he desired to do otherwise?

5 A He kept on making subtle comments that we felt --
6 I felt that he wanted to discuss the matter with us.

7 Q What were the comments he made that led you to
8 that conclusion?

9 A Well, about hitchhikers, for one.

10 Q All right. What significance did hitchhikers have?

11 A How dangerous it was.

12 Q Why did that have some significance to you?

13 A We knew of the deaths over here.

14 Q How did you know of that?

15 A I was told about them. I don't remember exactly
16 what happened, but Charlotte County -- let me think. We knew
17 about them. I forgot who told me about it.

18 Q You knew there was something to do with hitchhikers?

19 A That there had been three deaths.

20 Q Okay. Now, what other comments did he make?

21 A About hunting, fishing, how good a shot he was, how
22 he liked to use a .22, that he could shoot turkeys in flight,
23 pigeons on the run.

24 Q Anything else?

25 A I don't -- it just was idle conversation.

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A-20

Q What led you to believe he wanted to talk with you?

A Just -- he said if he acted like -- he said he had a headache, something on his mind, something was bothering him. He said that he hadn't slept lately as if he was having pressure from a headache that was bothering him, his conscience was bothering him, whatever.

Q Is that what he told you?

A Yeah. He said he hadn't slept because he had continuous headaches, you know.

Q Did you say anything to him?

A Yeah. I told him, you know, we could get some aspirin for him or whatever he wanted.

Q What happened when he -- tell me what led up to him finally talking to you.

A Well, we arrived at Crescent City, and prior to Crescent City I was instructed by Captain Miller to call him. I called Captain Miller from the Crescent City Police Department.

Q What was that for?

A The captain wanted to talk to me.

Q Okay.

A I had no longer got on the phone with Captain Miller when Investigator Chris Hord came back in. He remained with Mr. Henderson in the patrol car. Chris Hord came back and said that Mr. Henderson wanted to discuss our

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A-21

1 homicide, as well as help to locate the bodies of the three
2 people in what we thought was Citrus County at that time.

3 Q All right. What did you do at that point?

4 A I told Captain Miller, "Wait a minute," and I went
5 back out there and I re-advised him of his rights. I told him
6 in great detail that he did not have to discuss that with me,
7 and that if he did, he was going against the advice of the
8 Public Defender Woodard. He said he wanted to discuss that
9 matter and that he was concerned about the proper burial of
10 the three.

11 Q Okay.

12 A So I took the rights form, read him his rights
13 again. I read everything on the rights form to him, and then
14 he read everything in front of the witnesses, at which time he
15 signed it, I signed it, Investigator Chris Hord signed it,
16 Joe Anderson signed it, and Rosalyn Gail Carter (sic), which
17 was a notary, notarized it.

18 Q Now, there appears to have been some alterations
19 made or additions to the rights form, particularly the last
20 paragraph. Where was that done?

21 A That was done in Putnam County.

22 Q Crescent City?

23 A No, sir. At the sheriff's office before I left
24 just in case he decided that he wanted to have an attorney
25 and wanted to waiver -- go against the rights of whatever the

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A-22

1 attorney said to do.

2 Q All right. So you had that with you?

3 A Yes, sir.

4 Q All right. Read the form as you read it to him.

5 A From the beginning to the end?

6 Q Yes, sir.

7 A "Before we ask you any questions you must understand
8 your rights. You have the right to remain silent. Anything
9 you say can be used against you in a court of law. You have
10 the right to talk to a lawyer for advice before you answer
11 any questions and to have him present during the questioning.
12 You can have this right to advice and presence of a lawyer
13 even if you cannot afford to hire one. We have no way to
14 give you a lawyer, but you will be appointed one if you wish
15 if and when you go to court. If you wish to answer the
16 questions now without the lawyer present, you have the right
17 to stop answering the questions at any time. You also have
18 the right to stop answering at any time until you talk to a
19 lawyer."

20 The waiver -- this first portion of the waiver wasn't
21 included on the original document.

22 Q All right.

23 A "I have read the statements of my rights shown
24 above. I understand what my rights are and I am willing to
25 answer the questions and make statements. I do not want a

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A-23

1 lawyer. I understand and know what I'm doing. No promises
2 or threats have been made to me and no pressure of any kind
3 has been used against me." This is the portion that was typed
4 in at the sheriff's office. "I am aware that my attorney in
5 Charlotte County has instructed me not to speak with the law
6 enforcement officers. I am also aware of my constitutional
7 rights to disregard the instructions of my attorney and to
8 speak with the officers of Putnam County. I wish to exercise
9 my rights and to speak to these officers." Signed Robert Dale
10 Henderson.

11 Q Now, was all of that there before he signed it?

12 A Yes, sir.

13 Q Did he appear to understand it?

14 A Yes, sir. I went in great detail until he fully
15 understood it.

16 Q Did he appear to be under the influence of any drugs
17 or alcoholic beverages?

18 A No, sir.

19 Q Now, after he executed that particular rights
20 waiver, what did you do?

21 A He signed it, and then we proceeded to see if he
22 could direct us towards Dr. Perderber's residence, which he
23 did.

24 Q And did you have conversations with him after that?

25 A We talked along the way and after we found

2223

A-24

1 Dr. Forderber. Before we got there he said, "It'll be a
2 residence on the left down this dirt road."

3 Q Without going through all of his statements about
4 everybody he killed, direct your attention, please, to what
5 statements he made regarding the three hitchhikers.

6 A Okay. This was after we had finished up with the
7 last one, the western store. We were instructed not to go to
8 the sheriff's office because the press was there and that we
9 would meet Captain Miller at the back of the Clock Restaurant.
10 And Mr. Henderson agreed to take us and show us where the
11 three bodies were so that they could have a proper burial,
12 but he also was explicit that he did not want us to discuss
13 any elements of the crime with us or what we felt was Citrus
14 County authorities at that time.

15 Q Okay. So what did you do?

16 A Well, we proceeded to the Clock. We got him
17 cigarettes, another pair of shoes, some hamburgers, coffee,
18 and then Paul Usina, the lieutenant, came up. Since we had
19 been driving all day and figured it would be quite lengthy,
20 the captain suggested that Paul Usina go along with us to
21 do the driving. And we asked Mr. Henderson if it was okay
22 if Paul came in the vehicle and Mr. Henderson did not object
23 to it, at which time Paul started to drive.

24 Q Okay.

25 A And then we proceeded at his directions to the

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A-25

1 different roads in Charlotte County (sic) trying to locate
2 this area --

3 Q You mean Citrus County?

4 A -- Citrus -- excuse me -- Citrus County trying to
5 locate this area. We contacted the Citrus authorities and
6 explained the highway system, which Mr. Henderson explained
7 it was a split highway and that this area was a pretty well
8 isolated area off this road. We figured it was only one or
9 two areas either north of -- I believe we were in Crystal
10 River -- north of there or south of there. We proceeded
11 South, passed out of Citrus County into Hernando County, at
12 which time Mr. Henderson said, "This looks familiar." So we
13 tried the first dirt road to the right, went down there, and
14 it dead ends and there was a house down there. He said,
15 "No. This ain't it."

16 We went back out and went one more block south and
17 back in again, at which time he directed us to a left. And
18 as we approached the end of this road, which was a cul-de-sac,
19 he said, "There's a blue cup that we used to drink out of,"
20 drawing our attention to like a blue, plastic cup that you
21 might get cold drinks in or something, at which time we
22 stopped just before the cup. I stayed with Mr. Henderson,
23 and at the directions of Mr. Henderson, the officers proceeded
24 forward, at which time they found -- I think they found two
25 bodies. We backed off not to mess up the scene.

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A-26

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1 Citrus County had already notified Hernando County,
2 and we told them that we were leaving. At that time we
3 started backing out and Hernando County started to arrive.
4 As we left, it was blocked off by the Hernando County deputies,
5 the main road. They let us out and we proceeded back to
6 Putnam County.

7 Q Okay. So you didn't stay around for the discovery
8 of the third body.

9 A The third body was discovered, but at which time
10 we didn't let anybody approach Mr. Henderson.

11 Q So nobody tried to communicate or talk with him or
12 anything.

13 A We wouldn't let them because he didn't want it that
14 way.

15 Q Because he didn't want it.

16 A That's right. We instructed the Citrus County boys
17 when we first talked to them that Mr. Henderson was willing to
18 help us locate the bodies, but he did not want to discuss the
19 case so no interrogation would be allowed.

20 Q And why, again, did he express to you that he
21 wanted to help find the bodies?

22 A So they could have a proper burial.

23 Q Had you suggested that to him?

24 A I think he brought up "burial" and I might have
25 brought up "proper."

2226

1 Q Okay. How did he bring up burial?

2 A He said, "Find them so they can be buried." I
3 mean that's not an exact quotation, but, in essence, that's
4 what he said.

5 Q But it was his idea.

6 A Yes.

7 MR. McCABE: Just a moment, Judge.

8 BY MR. McCABE:

9 Q Now, Investigator Bakker, was Mr. Henderson
10 subsequently indicted by the Putnam County Grand Jury for the
11 two homicides that he admitted to in Putnam County?

12 A Yes, sir.

13 Q And what happened to those cases?

14 A He pled guilty to both of them.

15 Q And has he been sentenced?

16 A Yes, sir.

17 MR. McCABE: I have no further questions, Judge.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. SPRINGSTEAD:

21 Q Good morning, Sergeant Bakker.

22 A Good morning, sir.

23 Q I'll try to make it as brief as I can. I know
24 you've got to get back to Putnam County.

25 Sergeant Bakker, you indicated that pursuant to

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information you had received from Charlotte County you filled out Form 751. Is that correct?

A The information, like I said, was received by Captain Miller, which told me.

Q All right. So the information you had was from Captain Miller.

A Correct.

Q Okay. So I assume at that point Captain Miller worked for the Putnam County Sheriff's Department. Is that correct?

A He's chief of detectives, yes, sir.

Q Now, he didn't go down to Charlotte County and gather any information, did he?

A No, sir, he did not.

Q So whatever he knew about Henderson at that time he would have gotten second hand out of Charlotte County from their department. Is that correct?

A. From their department, correct.

Q Okay. Now, if Captain Miller got the information, why didn't he fill out Form 751 instead of you?

A Because it was my investigation, the Dr. Ferderber case.

Q Is it your testimony you did not contact the Charlotte County deputies directly?

2. That day I went down upon receipt of the information

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1 I left that day to Charlotte County and contacted Investigator
2 Lucas, and he subsequently turned over all of the reports, as
3 there were quite a few other agencies there, and then he gave
4 us copies of whatever they determined at that time or whatever
5 was told to them.

6 Q Okay. And you indicate these reports had to do
7 with the Putnam County matters?

8 A Well, several of them were just in great detail as
9 to everything, but also involved the Putnam County matter.

10 Q Okay. So when you went down to Charlotte County,
11 you weren't able to get any statements or any further
12 information from the defendant. Is that correct?

13 A Correct.

14 Q And so you were relegated, basically, just to the
15 information that had been obtained by the Charlotte County
16 people.

17 A Yes, sir.

18 Q Okay. And could you recite for the Court what that
19 information was? I assume you talked to them again while you
20 were down there.

21 A I talked to Investigator Lucas, who said that Mr.
22 Henderson admitted shooting two people in Putnam County. One
23 was a woman in a western store and the other was an elderly
24 doctor. They provided him a map and he pointed out the area,
25 which was Palatka, the City of Palatka. I don't believe the

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A-30

1 map reflected East Palatka or Satsuma. Based on that
2 information, Investigator Lucas or another representative had
3 called up my department and talked to Captain Miller.

4 Q But, in fact, they did not know that the bodies were
5 in Putnam County, did they?

6 A They assumed that -- when they called up they found
7 out they admitted to several homicides in the Palatka area,
8 that being Putnam County, and then called the sheriff's office.
9 And Captain Miller confirmed we, in fact, did have one homicide.
10 When they brought up the lady in the western store, we said
11 that a lady had died in there.

12 Q The point being that the Charlotte County authorities
13 did not indicate to you that they had obtained information
14 that, in fact, two homicides had occurred in Putnam County.
15 The deduction that the homicides had occurred in Putnam
16 County came from your office when you were able to match up
17 the death of a woman in a western wear shop and an elderly
18 doctor. That's when it first was realized that, in fact, it
19 was Putnam County. Is that correct?

20 A Except when Mr. Henderson pointed out Palatka and
21 said, "That's where it occurred."

22 Q Near Palatka. Obviously, it didn't occur in
23 Palatka.

24 A Right.

25 Q Near Palatka.

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A-31

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1 A Right.

2 Q But the point I'm trying to say is I believe you
3 stated earlier on direct examination that you were told that
4 there had been two homicides in Putnam County when, in fact,
5 that's not really what you were told. You were told that
6 there had been two homicides near Palatka.

7 A Right.

8 Q The fact that it was in Putnam County was a
9 deduction you made.

10 A Okay. Well, Palatka is kind of centered up in the
11 middle of Putnam. It's a very large area.

12 Q But I believe it's important, I think, that you
13 made the determination that it was in Putnam County, not the
14 Charlotte County people.

15 A Okay.

16 Q Is that correct?

17 A The end result was that we had one death and one
18 homicide that fit the same thing as what was related to the
19 Charlotte County authorities.

20 Q But Charlotte County -- what I'm trying to say,
21 Officer Bakker, is Charlotte County did not call you and say,
22 "We've got knowledge -- information from this individual that
23 he perpetrated two homicides in Putnam County and it was a
24 woman in a western wear store and it was an elderly doctor."
25 You drew the conclusions in Putnam County. They could not

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A-32

1 verify it was Putnam County.

2 A No, they could not. They said it was an elderly
3 woman and a doctor and we concluded that it was Putnam County
4 because that's what we were presently investigating.

5 Q I wanted to clarify that because on direct I believe
6 you indicated you were advised by the Charlotte County
7 authorities that they were aware of two homicides in Putnam
8 County, and that's not quite the truth.

9 A Well, it's how you say it. If you pointed out
10 Palatka, that's Putnam County. I don't know whether he came
11 right out and said, "I know for sure it was Putnam County,"
12 but he said it was in and around the Palatka area, which is
13 the center part of Putnam County.

14 Q This whole arrest warrant is being challenged on
15 the information that you had been provided with by the
16 Charlotte County authorities tying Henderson into the two
17 homicides that you had in Putnam County, so it's very
18 important that we are able to precisely establish what
19 information you received from Charlotte as opposed to
20 information you had obtained in Putnam at this point. Do
21 you understand what I'm saying?

22 A I really don't.

23 MR. McCABE: Excuse me. I object to that. That
24 wasn't a question.

25 MR. SPRINGSTEAD: Well, I'm just trying to clarify

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A-33

1 it for the witness, Your Honor, what I'm trying to do.
2 Now, he seems to think there's no big deal involved in
3 these semantics, and I think it's a real big deal is all.

4 MR. McCABE: I think it's getting argumentative.

5 MR. SPRINGSTEAD: It might be.

6 THE COURT: I would agree. You may continue your
7 cross-examination but without extending this line of
8 questioning.

9 MR. SPRINGSTEAD: Okay.

10 BY MR. SPRINGSTEAD:

11 Q Officer Bakker, you went back to Putnam County and
12 at some point in time I assume you made the decision that a
13 warrant would be obtained. Is that correct?

14 A Yes, sir.

15 Q Okay. And the application for the warrant is what
16 you had previously identified as what has been attached to our
17 defense motion. Is that correct?

18 A 751, correct.

19 Q And that's the form you used in Putnam County to
20 obtain an arrest warrant based on probable cause. Is that
21 correct?

22 A Yes, sir.

23 Q Now, aside from this particular affidavit, was there
24 any other documentary statements or any other sworn affidavits
25 prepared either by you and signed by you or someone else and

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1 signed by you regarding other factual details involving this
2 case as why you think Henderson perpetrated this particular
3 homicide?

4 A None other than the other document attached to the
5 751, which was made out by the State Attorney's office.

6 Q But that's the arrest warrant itself.

7 A Right. That was all that beared my signature at
8 that time.

9 Q Okay. Now, Officer Bakker, this affidavit is true
10 and accurate to the best of your ability. Is that correct?

11 A Yes, sir.

12 Q Okay. And you applied for the warrant on the 9th
13 day of February as stated by your affidavit and you received
14 a warrant on the same day. Is that correct?

15 A Yes, sir.

16 Q Okay. Officer Bakker, can you offer the Court any
17 explanation as to why with knowledge that Mr. Henderson is in
18 court -- I mean was in the Charlotte County jail on the 9th
19 day of February that you would have indicated in your
20 affidavit, the sworn statement, that he perpetrated the
21 homicide of Dr. Ferderber on the 9th day of February?

22 A We can back up, sir, but we can't go forward a
23 minute.

24 Q Explain that.

25 A You know what I'm talking about. The law states the

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1 we can back up from a date, but we can't go forward one minute,
2 so we used the 9th as the basis for the affidavit although the
3 homicide occurred before the 9th. We can back up, but we
4 can't go forward one second, so we're saying that on or
5 about the 9th or before that this homicide was committed.

6 Q That's not what the affidavit says, though. If I
7 may read it, it says, "I, R. W. Bakker, Putnam County
8 Sheriff's office," phone number, "do swear just and reasonable
9 cause exists to believe that on the 9th day of February, 1982,
10 the defendant ----" and it reads on.

11 A Based on the information that we developed from
12 Citrus County (sic) and from our investigation on the 9th,
13 we had probable cause to believe that a crime had been
14 committed in Putnam County.

15 Q But you're stating that you have probable cause to
16 believe he did the crime on the 9th day of February and you
17 obtained your warrant on that representation from Judge
18 Warren. Is that correct?

19 A Right.

20 Q Well, how could you swear -- we can back up --

21 MR. McCABE: Your Honor -- excuse me -- I believe
22 he's explained it and I believe we're getting into an
23 argument.

24 MR. SPRINGSTEAD: Well, I don't understand it, Your
25 Honor, if he's explained it.

2235

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1 MR. McCALL: I think what the sergeant is trying to
2 say is like when you charge somebody in information, you
3 can prove it occurred any time before that date, but you
4 can't prove it occurred after that date, and that's what
5 Officer Bakker has explained.

6 THE COURT: That's the Court's understanding of this
7 explanation.

8 MR. SPRINGSTEAD: Then the motion is sustained, Your
9 Honor?

10 THE COURT: Yes.

11 BY MR. SPRINGSTEAD:

12 Q Okay. Officer Bakker, when you went to Charlotte
13 County after obtaining the warrant, you went there on the
14 10th. Is that correct?

15 A Yes, sir. We left the 9th and arrived there on the
16 10th.

17 Q And I believe you indicated that when you arrived
18 down there you were taken to a courtroom wherein a hearing was
19 held. Right?

20 A Right.

21 Q And Mr. Henderson was present, along with his
22 attorney. Is that correct?

23 A Right.

24 Q Okay. And the declaration of rights form that you
25 earlier identified was, in fact, handed to you. Is that

2236

A-37

1 correct?

2 A Handed to me.

3 Q Yes. You took physical custody of that document.

4 A Yes, sir.

5 Q And, again, so there can be no misunderstanding,
6 I'll show you my copy. I assume that's the same one that the
7 State Attorney showed you.

8 A Oh, yeah.

9 Q Okay. This is what's known as Exhibit A and
10 attached to the motion, and that is a true and accurate
11 representation of that declaration.

12 A Yes, sir.

13 Q Okay. Now, at the time you picked Mr. Henderson up,
14 you received this declaration and you took your warrant over to
15 the jail and took custody of him. Is that correct?

16 A That's right.

17 Q And he was in your exclusive care and custody. Is
18 that correct?

19 A Yes, sir.

20 Q Okay. And the reason he was in your exclusive care
21 and custody was pursuant to his arrest for the murder of
22 Dr. Ferderber, --

23 A Yes, sir.

24 Q -- the warrant that we have just gone through.

25 A Yes, sir.

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A-38

1 Q And the warrant was obtained pursuant to your 751
2 form that was filed.

3 A Yes, sir.

4 Q Then I believe you testified either today or in
5 earlier depositions that you traveled back to Putnam County
6 for some three to five hours, approximately.

7 A I don't recall the exact time.

8 Q Okay. It was more than an hour or two, though.

9 A Definitely.

10 Q It's a long drive.

11 A Um-hum.

12 Q All right. During the course of that travel, you
13 testified that you did not in any way violate the terms and
14 conditions of the defendant's declaration. Is that correct?

15 A That's correct.

16 Q But at the same time you stated you complied with
17 it, you indicated you engaged in conversation with the
18 defendant.

19 A He started the conversation and we talked to him,
20 whatever topic he wanted to talk about, but none of the times
21 did we try to use this to get into what we wanted to talk
22 about.

23 Q Well, Sergeant Bakker, how long have you been a
24 police officer?

25 A Twenty years.

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A-39

3
1 Q Well, if you've been a police officer for 20 years,
2 then you would agree that obviously one way to induce an
3 individual charged with an offense into making a statement is
4 to become friends with that individual, would you not?

5 A Well, that's not necessarily so. You try to be
6 friendly to anybody and talk.

7 Q But, Sergeant Bakker, the question is isn't it a
8 technique that's used, based on your 20 years of experience,
9 that if you become friendly with a person, he's liable to
10 talk to you. Isn't that correct?

11 A Well, that's your opinion of technique that could
12 be used. You want to talk to me, I'll talk to you outside.
13 It doesn't matter. I'm not trying to use a technique on you.

14 Q What you and I talk about doesn't make any
15 difference in the case. What I'm asking you, Sergeant Bakker
16 -- do you understand the question?

17 A Yes, I do. I really do.

18 Q Would you please answer the question?

19 A I didn't engage him in conversation to get him to
20 talk about this case because of this letter from Mr. Woodard.

21 Q Sergeant Bakker, you still haven't answered my
22 question. The question was based on your 20 years experience,
23 isn't it a known fact to you that one way in which to gain
24 information and gain the confidence of a defendant that you
25 desire to maybe get information from is to become friends with

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A-40

1 him.

2 A Sir, if I answer that question and if I say, "Yes,
3 that is a technique," you'll say that knowing that technique
4 and based on that rational, I used that technique against him.
5 Right?

6 MR. SPRINGSTEAD: Maybe I ought to be on the witness
7 stand, Your Honor.

8 BY MR. SPRINGSTEAD:

9 Q Well, I want you to answer my questions first. I
10 mean, if you say no, then I won't ask that question, but I
11 tend to believe that you're going to have to say yes because
12 you have been experienced for 20 years.

13 A Yeah, it is a technique, but I'm not saying that I
14 used that technique on him.

15 Q Let me just ask that question. Officer Bakker, can
16 you state for the record under oath that the thought never
17 crossed your mind that if you became friends with Mr.
18 Henderson you might get further information on that trip back?

19 A I'll follow that to the letter of the law. I did
20 not try to broach anything. If he wanted to talk to me about
21 the case, he could, but I would like for him to talk to me,
22 which he eventually did, but I made no overtones to suggest
23 that he should talk to me.

24 Q Other than just to engage him in friendly
25 conversation --

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A-41

1 A Yeah.

2 Q -- with knowledge that that's one way to obtain the
3 confidence of an individual and ultimately get some statements
4 that you are looking for from him.

5 A About hunting in Wyoming? That's not even germane
6 to this case and he was telling us -- I guess it was Wyoming
7 or up in the mountains.

8 Q Officer Bakker, in fact, you exercised a technique
9 that you had become well acquainted with over the 20 years of
10 your experience, and that is if nothing else works, make
11 friends with the individual and he may give you some informa-
12 tion. Isn't that correct? Just answer the question.

13 A It is a technique, true, but I didn't necessarily
14 use that on Mr. Henderson to obtain the information.

15 Q You can answer my question yes or no under oath.
16 Just answer that question.

17 A Yes, it is a technique.

18 Q And you used it in this case.

19 A No, sir. I did not use it specifically for this case
20 no, sir.

21 Q You used it in this case, though. That's my
22 question.

23 A By talking to him?

24 MR. McCABE: Excuse me. He answered the question.
25 He said he didn't use it.

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1 MR. SPRINGSTEAD: Your Honor, he hasn't answered ry
2 question. He has dodged the question because he knows
3 what the answer is and he doesn't want to commit perjury
4 in this courtroom.

5 MR. McCABE: He said no, Judge.

6 MR. SPRINGSTEAD: He did not say no.

7 MR. McCABE: Ask him again.

8 THE COURT: Is it your intention to answer the
9 question in the negative?

10 THE WITNESS: Sir?

11 THE COURT: Is it your intention to answer the last
12 question in the negative?

13 THE WITNESS: Yes, it is a technique, sir, but no,
14 I did not set out intentionally to get him to talk to me
15 because I knew that the Public Defender gave us the
16 letter and I didn't want to violate any case or mess up
17 any case of ours by trying to coerce him or play games
18 with him because, obviously, he knew what he was doing
19 and he was intelligent enough that I was afraid that he
20 could turn it around on us later.

21 MR. SPRINGSTEAD: Your Honor, that is not responsive
22 to the question. The question was with knowledge of --
23 he's admitted to the technique of engaging in friendly
24 conversation. I asked him did he engage in that friendly
25 conversation with the hope of possibly getting some

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1 information, and I don't think he's answered that question:

2 THE WITNESS: I did not set out to do it, no, sir.

3 I did not.

4 BY MR. SPRINGSTEAD:

5 Q But, in fact, that's what happened, isn't it?

6 A That's the end result, yes, sir.

7 Q Okay. Thank you.

8 MR. SPRINGSTEAD: If I may have a moment, Your
9 Honor.

10 BY MR. SPRINGSTEAD:

11 Q Okay. Officer Bakker, you went on to testify on
12 direct examination that a waiver was obtained, a written --
13 typed waiver that Mr. Henderson ultimately signed at
14 approximately 1543 hours on the 10th of February. Now, I
15 believe you indicated that there was another paragraph added
16 in. Is that correct?

17 A Yes, sir.

18 Q Okay. And that was added in before you left to go
19 get him in Charlotte County?

20 A Yes, sir.

21 Q Okay. Well, Officer Bakker, how can you explain
22 the preparation of that form and the physical presence of
23 that form before you went to get him in Charlotte County if
24 it wasn't on your mind to try to get a statement from him?

25 A Well, if he decided at any time during the trip to

2243

A-44

1 discuss it with us, I wanted him fully aware that even though
2 he had been instructed not to that he had his right to do so.

3 Q So obtaining the statement from the defendant was
4 on your mind before you left to go get him in Charlotte
5 County. Is that correct?

6 A If he wanted to talk to us, yes.

7 Q It was on your mind to get a statement from the
8 defendant prior to leaving for Charlotte County. Yes or no?

9 A Yes, if we could.

10 Q Now, Officer Bakker, you testified that prior to
11 leaving Charlotte County with the defendant you had already
12 received prior knowledge about these three hitchhikers who
13 had been shot. Is that correct?

14 A Before leaving --

15 Q -- Charlotte County with the defendant.

16 A That he had testified that he had been involved,
17 not necessarily in Charlotte or -- excuse me -- not in
18 Henderson -- excuse me -- not Hernando or Citrus County, but
19 that he had told the officers down there that he had killed
20 three hitchhikers and somewhere in the north part of Florida.
21 We didn't know exactly where, Panhandle, Hernando County, or
22 where. We obtained a map in Crescent City with the route
23 numbers, and I think, if I remember correctly, he said some-
24 thing about Route 44 and coming down 19, and by process of
25 elimination, we started heading towards Citrus County.

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A-45

Q And Officer Hord also had that information.

A Yes, sir.

Q Regarding Officer Hord -- just to make sure that I understand everything -- the actual statement from Mr. Henderson that he wanted to give some information was obtained by Officer Hord outside of your presence. Is that correct?

A Yes, sir.

MR. SPRINGSTEAD: If I may have just a moment,

Your Honor.

BY MR. SPRINGSTEAD:

Q Okay. Officer Bakker, you testified here in a deposition, if I recall, or during the course of that deposition I believe the question was asked, "What do you think Mr. Henderson's motivations were for wanting to disclose the whereabouts of these bodies?" I believe your statement to me was, "He wanted them properly buried."

A Or buried. The end result was properly buried.

Q I'm not using the deposition yet, but I think you can recall the conversation. How did you get into that particular conversation with the defendant as to why he wanted to disclose this information?

A I don't recall that part other than when Chris Hord brought him in and said that -- I was on the phone and he wanted to discuss the matter of our homicide, as well as assist us in the recovery of the bodies.

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Q Was the term "Christian burial" ever used?

A Christian burial?

Q Christian burial, yes.

A I don't recall if it was or not.

Q Okay. Officer Bakker, how often do you get involved in transportation of defendants?

A If it's my case and it's a serious case, I usually do it, and if it's within driving range.

Q Now, on this particular case, Robert Dale Henderson, I believe you indicated, was taken by a convenience store and cigarettes and a cold drink were purchased.

A Well, this was later on. This was --

Q After you left Charlotte County, somewhere up the road, I believe you indicated you stopped and bought cigarettes and cold drinks or something.

A We stopped several times, one of which when we fed him in St. Petersburg. And we stopped another time near Orlando and I believe I got cigarettes. I don't know.

Q Who paid for those?

A I paid for them.

Q Is that a normal practice with you at any time you transport defendants?

A Sure.

Q You pay for it out of your own pocket?

A Sure.

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1 Q Do you get reimbursed by the sheriff's department?

2 A If it's nickels and dimes, I never worry about it.

3 Q Okay. I believe you further testified that Mr.
4 Henderson was taken -- after he gave and signed a waiver at
5 the Crescent City Police Department, he was taken to a place
6 and hamburgers were purchased.

7 A Yes, sir.

8 Q And shoes were purchased?

9 A No, sir. Shoes were obtained from the jail.

10 Q Okay. Shoes were picked up at the jail.

11 A Yes, sir. Cigarettes were obtained, coffee, and
12 hamburgers.

13 Q In other words, you were willing to make him as
14 comfortable as need be to get this information. Is that
15 correct?

16 A From the beginning -- from the time we left
17 Crescent City, he said that his feet was hurting him, at
18 which time we told the captain that we would need another
19 pair of shoes and gave his size -- I believe he had flip flops
20 on from Charlotte County -- and that what kind of cigarettes
21 he smoked, and we told him we would obtain those, also.

22 Q Officer Hord (sic), at any time did you --

23 MR. McCABE: Bakker.

24 MR. SPRINGSTEAD: Bakker. Excuse me. I've got
25 Officer Hord on my mind.

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1 BY MR. SPRINGSTEAD:

2 Q Officer Bakker, at any time did you attempt to
3 contact an attorney on behalf of Robert Dale Henderson and
4 have him advised of his rights by an attorney prior to
5 obtaining the waiver from him and obtaining the statement
6 from him?

7 A Did I contact a lawyer?

8 Q Yes.

9 A No, sir. I told him that he had that right. If he
10 wanted to talk to a lawyer, he had that right. I went into
11 great details on his rights in Crescent City, not just the
12 formality of reading it through, sir. I went in great detail
13 so he fully understood his rights.

14 Q But no attorney was obtained and he was never taken
15 before an attorney. Is that correct?

16 A Correct. Well, eventually when he came back to
17 Putnam County after the discovery of the three deceased over
18 here.

19 Q Officer Bakker, when you left to go look for the
20 bodies, it was a continuous thing. Is that correct? From
21 the time you got the admissions from him, you got Lieutenant
22 Usina and you continued to move. Is that correct?

23 A Right.

24 Q And it was a continuous process. From the time he
25 made these admissions, you were with him from that time until

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1 you found and located the bodies.

2 A Yes, sir.

3 Q Okay. Citrus County authorities, as it turned out,
4 were not even involved. Is that correct?

5 A Other than we met them in Crystal River trying to
6 locate the area.

7 Q Right, but, in fact, you just traveled through
8 their county and nothing of importance was determined.

9 A We stopped at a gas station because Robert had to go
10 to the bathroom. We got him a Coke.

11 Q Okay. The Hernando County authorities had no prior
12 knowledge that these homicides may have occurred in Hernando
13 County, did they?

14 A No.

15 Q The first they heard this was when y'all called them
16 out to the scene.

17 A Right.

18 Q And at that time --

19 A Well, Citrus County called them out. We contacted
20 Citrus County, also, because they had no idea we were on our
21 way over here either. We were just trying to follow the
22 directions of Mr. Henderson as to the route trying to figure
23 out what county it occurred in.

24 Q But Hernando County was summoned to the scene while
25 you were there. Is that correct?

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1 A By Citrus County.

2 Q And they showed up. Is that correct?

3 A Yes, sir.

4 Q And the bodies were given to them at that time.

5 A Well, we turned it over to the Citrus boys and we
6 backed out.

7 MR. SPRINGSTEAD: Okay. If I may have a moment,
8 Your Honor.

9 BY MR. SPRINGSTEAD:

10 Q Officer Bakker, was Robert Dale Henderson ever taken
11 into the jail?

12 A Our jail?

13 Q The Putnam County jail. That's correct.

14 A Yes, sir.

15 Q That night?

16 A Well, whatever time we got back.

17 Q Back from Hernando County.

18 A Yes, sir.

19 Q Okay. But prior to leaving on this quest to find
20 these three alleged victims, he was not taken into the Putnam
21 County jail. Is that correct?

22 A No, sir.

23 Q Officer Bakker, in fact, wasn't there a statement
24 made either by you or in your presence that you did not want
25 the defendant to go back to the jail because he might come in

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1 contact with an attorney?

2 A No. Not in my presence, it wasn't.

3 Q You didn't make that statement?

4 A No, sir.

5 Q And it was not made in your presence?

6 A If he'd requested an attorney, sir, we would have
7 stopped right then and there.

8 Q That's not exactly what I asked. I asked if either
9 you or someone in your presence made the statement that,
10 "We don't want to take Mr. Henderson by the jail because he
11 may come in contact with an attorney."

12 A No.

13 Q That was never said?

14 A I don't recall that at all, sir.

15 Q Okay. Officer Bakker, do you know or have knowledge
16 based on your 20 years of experience in the criminal field,
17 if there is a technique for obtaining admissions regarding
18 homicides involving the aspect of decent Christian burial
19 for the victims?

20 A I can't say there's a technique or there's not a
21 technique. I didn't attend a large academy to learn technique.
22 I started my police work in Belle Glade, which is quite out
23 of the way. I learned from the world of hard knocks.

24 Q Well, based on your experience in the world of hard
25 knocks, would you say that that is a technique that is used to

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1 gather information from an alleged suspect of a crime?

2 A Never had to use it. Never even heard of it.
3 Never worked a homicide where the bodies were not found and
4 to try to broach this thing.

5 Q So you're saying you've never even heard of that
6 particular --

7 A I might have. I don't recall it. I mean I've just
8 never been involved in an investigation where we had a body
9 and we didn't know where it was at.

10 MR. SPRINGSTEAD: Just a moment, Your Honor.

11 I have no further questions at this time of this
12 witness.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. McCABE:

16 Q Investigator Bakker, do you recall the series of
17 questions Mr. Springstead asked you regarding who concluded
18 that the homicide occurred in Putnam County, whether it was
19 the Charlotte County people or the Putnam County people? Do
20 you remember that series of questions?

21 A Yes, sir.

22 Q Did Putnam County call Charlotte County looking to
23 find out if they had a murderer down there or did Charlotte
24 County call Putnam County?

25 A Charlotte called Putnam.

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1 Q Now, on the ride back from Charlotte County --
2 first of all, before you got your warrant but after Mr.
3 Henderson was in custody in Charlotte County, you went down
4 to Charlotte County. Correct?

5 A On the 6th.

6 Q Now, the things that Captain Miller had told you,
7 did you confirm them by your conversations with Detective
8 Lucas?

9 A Yes, sir.

10 Q So you had a face to face conversation with
11 Detective Lucas.

12 A Yes, with Investigator Lucas.

13 Q All right. And that was before you got the warrant.

14 A Oh, yes.

15 Q Now, on the way back you talked about -- you said
16 that the conversation ensued about hunting in Montana or
17 Wyoming or something like that. Who was initiating this
18 conversation?

19 A Mr. Henderson talked about the hunting.

20 Q How about the other subjects that came up?

21 A It was just generalities, just everything. Whatever
22 came up, we talked about with the exception of trying to coerce
23 him into saying something about this case.

24 Q Was Mr. Henderson talkative?

25 A Oh, yes.

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1 Q Did he ever say, "I don't want to talk to you at
2 all about anything at all"?

3 A No, sir.

4 Q Who initiated the conversations?

5 A Mostly him. Well, he told us about the hunting
6 down there near Punta Gorda or wherever he turned himself in
7 at, telling us what he could shoot. I told him that I wasn't
8 much of a hunter. I don't believe in killing the animals.
9 He'd say he'd go up in the mountains and stay for a long
10 period of time by himself, that he loved the isolation and
11 loved the wilderness.

12 Q And you talked to him?

13 A Yes.

14 Q You weren't rude?

15 A Of course not.

16 Q Now, did you in any way suggest to him that it
17 would be to his benefit to talk with you about your cases?

18 A I never even talked about my cases, period.

19 Q Did you ever bring up the subject of your cases --

20 A No, sir.

21 Q -- the whole ride back until you got to --

22 A No, sir, not until he came back with Chris Hord.

23 Q Did you bring up the subject of these cases
24 subsequently determined to be in Hernando County? Did you
25 bring those up at all, --

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A-55

1 A No, sir.

2 Q -- indirectly, directly, anything?

3 A No.

4 Q Did he ever indicate to you on the way back that
5 he wanted to talk to a lawyer?

6 A No, sir.

7 Q Did he talk about lawyers at all?

8 A I don't recall him talking about lawyers because
9 it's my policy if he mentioned a lawyer, I stop.

10 Q He never said anything about a lawyer?

11 A No, sir.

12 MR. McCABE: That's all I have.

13 THE COURT: Recross?

14 MR. SPRINGSTEAD: Yes, Your Honor.

15 RECROSS-EXAMINATION

16 BY MR. SPRINGSTEAD:

17 Q Officer Bakker, you said that, you know, any mention
18 that had been made of a lawyer you would have stopped right
19 there. Is that correct?

20 A Correct.

21 Q Well, you know, you were served with this document
22 that states basically, "I don't want to talk to any police
23 officers, engage in any conversations whatsoever without my
24 lawyer being present." Now, that was before you even left
25 Charlotte County.

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A-56

1 A Well, we didn't -- what topic we discussed was what
2 he broached first, and we did not try to get anywhere near
3 any of the topics regarding this matter because it also
4 states in there of any criminal matter.

5 Q But you admit engaging in casual conversation and
6 basically asking him questions about those topics, don't you?

7 A I guess I might have about the topics that concerned
8 him, but nothing on a criminal matter. You know, if he said,
9 "Well, I can shoot a cow or a turkey at a hundred yards," I'll
10 say, "Wow! That's pretty good shooting," something like that
11 because I don't like to hunt. I think I might have told him
12 that my experience with hunting is nil because I don't hunt.

13 MR. SPRINGSTEAD: No further questions, Your Honor.

14 THE COURT: Any additional questions?

15 MR. McCABE: Just a moment, please, Judge.

16 No questions.

17 THE COURT: All right. Call your next witness.

18 We'll continue with the Putnam County deputies so that
19 they can leave.

20 MR. McCABE: Yes, sir. I only intend to call one
21 more.

22 Detective Hord.

23 THE COURT: All right. Let's take a five minute
24 break.

25 (Court recessed at 12:05 p.m.)

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(Court reconvened at 12:12 p.m.)

MR. McCABE: Call Officer Hord, Your Honor.

THEREUPON,

WILLIAM CHRIS HORD,

a witness called on behalf of the State of Florida, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION:

BY MR. McCABE:

Q State your name, please, sir.

A William Chris Hord.

Q Your occupation?

A I'm a detective with the Putnam County Sheriff's office.

Q All right. Detective Hord, were you involved back in February of this year with Detective Bakker in retrieving one Robert Dale Henderson from the Charlotte County authorities?

A Yes, sir, I was.

Q And did you accompany Detective Bakker and Henderson on the ride back from Charlotte County to Putnam County?

A Yes, sir, I did.

Q I want to direct your attention to a portion of that ride occurring, I believe, near Crescent City when Bakker got out to call somebody.

A Yes, sir.

Q All right. Who was he going to call and why?

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1 A The chief of detectives of the sheriff's department
2 in Putnam County, Captain Cliff Miller. We were instructed by
3 Captain Miller when we got back in Putnam County to give him
4 a call and appraise him of the situation as far as what was
5 going on at the sheriff's office.

6 Q Okay. Now, during the trip from Punta Gorda or
7 Charlotte County to Crescent City, had there been any conversa-
8 tions with Mr. Henderson?

9 A Certainly.

10 Q And what type of conversations? How would you
11 characterize those conversations?

12 A Just strictly that, just -- you don't ride mute for
13 however many miles that was. We just talked.

14 Q Were there any conversations between Charlotte
15 County and Putnam County relating to any alleged crimes that
16 Mr. Henderson might have committed?

17 A No, sir.

18 Q All right. Did that subsequently change?

19 A After we got to Putnam County, yes, sir.

20 Q All right. Tell the Court, if you would, Detective,
21 what occurred in Putnam County that changed the course of the
22 conversation.

23 A We pulled into the back of the Crescent City Police
24 Department -- there's a parking lot and entrance to the
25 police department -- in order to let Sergeant Bakker go inside

2258

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1 and make his phone call. Myself and Mr. Henderson stayed in
2 the patrol car. Mr. Henderson acted like he was interested in
3 what we were doing. I explained to him that we were in
4 Putnam County, that Sergeant Bakker was calling the chief of
5 detectives just to tell him that we were here. He wanted to
6 know what we would do then.

7 Q Who wanted to know?

8 A Mr. Henderson.

9 Q All right.

10 A He was -- I told him it was up to the captain, but
11 more than likely we'd be heading to the Putnam County
12 Sheriff's Department to the detention facility. He kind of
13 looked at me like it was just, "Is that all," and I asked
14 him what it was he was trying to tell me. He indicated that
15 he wanted -- he thought he wanted to assist me in finding some
16 bodies. I told him that he was not in a position to think
17 he wanted to do something, that he had to make up his mind,
18 and he said that he did want to help me in my investigations.

19 Q All right. Now, had the subject of missing bodies
20 come up prior to that time?

21 A It's my understanding they had, yes, sir.

22 Q Where?

23 A In Charlotte County. Mr. Henderson had made some
24 statements to some people down there in reference to there
25 were some bodies somewhere that had not been located.

2259

A-60

1 Q Now, had that information been passed on to y'all?

2 A We had heard that information, but we had no
3 personal knowledge of it.

4 Q During the course of the trip from Charlotte County
5 to the Crescent City Police Department, had there been any
6 conversation regarding missing bodies or finding bodies or
7 burials or anything like that?

8 A Not that I recall.

9 Q And what prompted you, again, if you would,
10 Detective Hord, to ask him the question, "What are you trying
11 to tell me?"

12 A Just his reaction to the fact that we were there
13 and there wasn't anything else going on except he was going
14 to jail.

15 Q And what was that reaction, again?

16 A It was just kind of a, you know, "Isn't there
17 something else?" You know, "There's more to this than what
18 y'all know."

19 Q Did he say anything?

20 A It was more just -- at that point in time, no.

21 Q All right. Then what was it? What did he do?

22 A Well, it was just kind of a look on his face like,
23 "You've got to be kidding," you know. "Here I am. I know
24 all these things, and all you're going to do is take me to
25 jail." It's hard to describe an expression.

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A-61

Q All right, sir. And the first statement out of his mouth that was related to criminal matters was "I think I want to help you find some bodies."

A Yes, sir.

Q And what occurred after that?

A I took Mr. Henderson inside the police department at Crescent City. I got Sergeant Bakker's attention and informed him that Mr. Henderson was wanting to talk to us and that he had also indicated that he needed to go to the rest room. Sergeant Bakker went back and used the phone while I took Mr. Henderson to the rest room. Then we went in and pulled out a rights form that we had prepared in the event that Mr. Henderson did want to talk to us, and Sergeant Bakker read it to him and gave it to him to review before he signed it. Then it was signed in front of myself, Sergeant Bakker, patrolman in Crescent City, Joe Anderson, and Rosalyn Cook, who is a secretary there and a notary public.

Q At any time during the trip from Charlotte County to Crescent City, had you tried to induce Mr. Henderson into talking about these bodies or about your cases in Putnam County?

A No, sir.

MR. McCABE: I believe that's all I have, Your Honor.

2261

A-62

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. SPRINGSTEAD:

4 Q Officer Nord, it's my understanding that your
5 involvement with the Henderson case actually began at or
6 about the time y'all were scheduled to go down and pick him
7 up. Is that correct?

8 A No, sir, it was not.

9 Q Okay. Were you assisting Officer Bakker in
10 investigating the two homicides?

11 A The single homicide of Dr. Murray Ferderber.

12 Q Okay. And that's how you got involved in the case.
13 Is that correct?

14 A Yes, sir.

15 Q And that's why you went to Charlotte County on
16 that day?

17 A We went to Charlotte County that day, and my part
18 was to act as a second officer and a driver.

19 Q During the course of preparing to go to Charlotte
20 County, I believe you indicated that you had prepared or had
21 caused to be prepared a waiver just in case Mr. Henderson
22 wanted to give you some information.

23 A I knew of a waiver that had been prepared. I did
24 not prepare it.

25 Q Well, I say you either prepared it or caused it to be

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1 prepared.

2 A I didn't have anything to do with that.

3 Q All right. You knew it existed before you left.

4 Is that right?

5 A Yes, sir.

6 Q Okay. It existed for the purpose of using it in
7 case he wanted to make a statement to you. Is that correct?

8 A That's correct.

9 Q Okay. And that was on your mind before you left
10 to go to Charlotte County. Is that correct?

11 A Yes, sir.

12 Q How long did it take you to get to Charlotte County?

13 A Sir, we left on the 9th in the afternoon, and about
14 halfway down we spent the night. And then the next morning
15 we got up and went on down to Charlotte County.

16 Q During the course of that travel, you and Officer
17 Bakker had one or more conversations regarding how you were
18 going to handle Mr. Benderson, didn't you?

19 A Yes, sir.

20 Q You had one or more conversations regarding any
21 type of interrogation procedures that might be used, too,
22 didn't you?

23 A No, sir.

24 Q You never discussed possibly the event if he
25 decided to make a statement or what would happen if informat:

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A-64

1 came to light?

2 A In that event, then Sergeant Bakker was the officer
3 that would have any dealings with Mr. Henderson.

4 Q But you do admit that there was a discussion
5 between you and Sergeant Bakker regarding how you were going
6 to handle Mr. Henderson the next day when you picked him up.

7 A Certainly.

8 Q These discussions involve any type of plan between
9 you and he to avoid talking about the case and yet establish
10 a friendly rapport with Mr. Henderson?

11 A We were strictly going to transport him to Putnam
12 County.

13 Q And it never crossed your mind that you may have an
14 opportunity to establish a friendly rapport with him?

15 A Possibly.

16 Q Possibly. What does that mean?

17 A Sir, I can't really say what crossed my mind this
18 long ago.

19 Q Well, Officer Eord, --

20 A I can say we planned the trip.

21 Q Officer Eord, how long have you been in police
22 work?

23 A I've been with the sheriff's department in Palatka
24 about seven years.

25 Q Approximately, to the best of your knowledge, how

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1 many cases have you worked on where a confession was subse-
2 quently obtained from a defendant?

3 A Two dozen.

4 Q Okay. Have you ever found during the course of your
5 police work that in certain cases you can get information from
6 an individual if you act friendly and cordial toward that
7 person and engender a sense of confidence and friendliness
8 about the two people involved?

9 A Certainly.

10 Q And, in fact, in this particular case, that type of
11 conversation and friendly atmosphere prevailed in that
12 sheriff's car going from Charlotte County back to Putnam
13 County, didn't it?

14 A Yes, sir, it did.

15 Q And you knew during the course of the conversations
16 and the friendly rapport that it was possible that this man
17 may begin to cooperate with you and Officer Bakker and give
18 you information pertinent to his cases. Isn't that true?

19 A There was that possibility, yes, sir.

20 Q Now, when you got to Charlotte County you received,
21 I believe, from the time you picked up Mr. Henderson -- you
22 did not receive it personally, but you were made aware of and
23 you saw a declaration executed by the defendant wherein he
24 indicated he didn't want to talk to any police officers. Is
25 that correct?

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A-66

1 A Yes, sir. I received a copy of it.

2 Q And I believe you testified at deposition that you
3 complied with that to the letter.

4 A Yes, sir.

5 Q But yet you admit here today in court that you
6 engaged in conversations from the time you left Charlotte
7 until you got to Putnam County with the defendant.

8 A Certainly.

9 Q And that conversation was of a friendly, cordial
10 nature not related to the offense, just friendly, cordial,
11 whatever you wanted to talk about you talked about.

12 A Yes, sir.

13 Q Now, Officer Hord, it's my understanding that when
14 you got to Crescent City Officer Bakker left the vehicle and
15 went inside and made a phone call. I believe he went in a
16 convenience store or something and made a phone call or the
17 police department and made a phone call to the Putnam County
18 Sheriff's office.

19 A Yes, sir.

20 Q Now, prior to arriving at that destination at that
21 location, you had already engaged in conversations with the
22 defendant regarding three hitchhikers and their deaths. Is
23 that correct?

24 A No, sir.

25 Q Well, at any time prior to arriving at the Crescent

2266

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1 City Police Department, did the conversation between yourself
2 and Mr. Henderson ever lead you to believe that he wanted to
3 tell you something?

4 A Several times.

5 Q This is during the course of the trip. Is that
6 correct?

7 A Yes, sir.

8 Q Okay. But yet he did not give you any factual,
9 hard information at that time, did he?

10 A No, sir.

11 Q So at the time you were parked outside of the
12 Crescent City Police Department, you had not obtained any hard,
13 factual evidence that would link him to this case. Is that
14 correct?

15 A Personally, no.

16 Q Okay. Then I believe you indicated that you could
17 just tell by the expression on his face that he wanted to
18 tell you something. Is that correct?

19 A I could tell that he had something on his mind. I
20 could not tell if he wanted to tell me anything or what.
21 That's why I asked him.

22 Q You were reading that by his facial expressions and
23 his physical gestures. Is that correct?

24 A Yes, sir.

25 Q Okay. And then, Officer Hord, at that point in time

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1 you turned to Mr. Henderson and said, quote, "What is it
2 you're trying to tell me?" Is that correct?

3 A That's correct.

4 Q Okay. And pursuant to that question, Mr. Henderson
5 was ultimately presented with the waiver that you prepared
6 before you left Putnam County, which he signed, and then
7 proceeded to give you a complete account of what happened
8 regarding those hitchhikers and, in fact, took you to where
9 the bodies were located. Is that correct?

10 A Yes, sir.

11 MR. SPRINGSTEAD: One moment, Your Honor.

12 I don't have any further questions, Your Honor.

13 MR. McCABE: Brief, if you please, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. McCABE:

16 Q You indicated, Detective Hord, that several times
17 during the trip you were under the impression that Henderson
18 wanted to tell you something. Correct?

19 A That's correct.

20 Q What led you to those impressions? What did he say
21 that led you to think that?

22 A It was just -- he was aware, I'm sure, of what had
23 gone on in Charlotte County.

24 MR. SPRINGSTEAD: I'm going to object to that,
25 Your Honor.

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1 BY MR. McCABE:

2 Q It's your understanding that what had gone on in
3 Charlotte County occurred between himself and other people
4 by him talking to detectives?

5 A Yes, sir.

6 Q Well, what was it on the trip that led you to the
7 impression that he wanted to talk or say something?

8 A Well, there was just the comments about hitchhikers
9 on the side of the road. He would point them out. He would
10 bring up the fact that there was a woman hitchhiking on the
11 side of the road, "Hey! Look at that!"

12 Q Did he ever talk about how dangerous hitchhiking was

13 A We didn't get into it, no, sir.

14 Q All right. Go ahead.

15 A He was big on firearms. He got to talking about
16 guns, .22 caliber pistols and rifles. He talked about how as
17 a child he was sent out hunting and he was given a couple of
18 bullets by his father and he was expected to bring home two
19 pieces of meat, that he wouldn't miss and that he had a high
20 proficiency with his firearm. He talked about that prior to
21 giving himself up to the authorities in Charlotte County
22 that he had spent a number of days in the woods hunting and
23 living off the land. He had used a pistol, a .22 caliber
24 pistol, to shoot a small pig of about 30 pounds while it was
25 running from him. He shot a turkey. He lived with fishing

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1 with a hand line. He was just very -- it was to the point of
2 bragging about how good he was with guns. He was -- like I
3 say, the hitchhikers, knowing we were looking for hitchhikers,
4 not personally in our investigation, but there was rumors that
5 there were people out that had been hitchhiking that were not
6 found.

7 Q But that had not been discussed with Mr. Henderson
8 by you, though.

9 A No, sir.

10 MR. McCABE: That's all I have, Judge.

11 MR. SPRINGSTEAD: Just two questions, if I may,
12 Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. SPRINGSTEAD:

15 Q Officer Hord, how long did it take you to travel
16 from Charlotte County to Putnam County, approximately?

17 A Four and a half - five hours.

18 Q And during that course of time, Mr. Henderson was
19 in your and Officer Bakker's exclusive care, custody, and
20 control. Is that correct?

21 A Certainly.

22 Q And he was in your care, custody, and control
23 simply because or pursuant to the authority of Judge Warren's
24 arrest warrant issued on the day before. Is that correct?

25 A That's correct.

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1 MR. SPRINGSTEAD: No further questions.

2 THE COURT: Officer, would it be fair to say or
3 assume that the manner in which you and your fellow
4 officer conducted yourself on the return back to Putnam
5 County was the same as you would have done in any other
6 case of returning a suspect from some other jurisdiction
7 to your jurisdiction?

8 THE WITNESS: Yes, sir.

9 THE COURT: There was nothing unusual or peculiar
10 in the manner that y'all conducted yourself with this
11 defendant?

12 THE WITNESS: No, sir.

13 THE COURT: All right.

14 MR. McCABE: Thank you, Judge.

15 I have no further questions.

16 MR. SPRINGSTEAD: One minute, Your Honor. I'm
17 thinking about the questions the Court asked to see if
18 there's something I might want to ask in response.

19 BY MR. SPRINGSTEAD:

20 Q Officer Hord, in response to the Judge's questions,
21 I would like to follow up, if I may.

22 How many times have you been involved in the
23 transportation of individuals accused of homicide in Putnam
24 County?

25 A None.

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1 A None.

2 Q So when you answered the Judge's question about,
3 you know, you didn't do anything any different in this
4 particular case in regard to any other case you had been
5 involved in like that, you really kind of gave a misleading
6 answer, didn't you, because you had not been involved in any
7 other case like this.

8 MR. McCABE: Objection, Your Honor.

9 MR. SPRINGSTEAD: Well, wait a minute, Your Honor.
10 I think that's a fair question.

11 MR. McCABE: I think that I can object to any
12 question, Mr. Springstead.

13 MR. SPRINGSTEAD: Okay.

14 MR. McCABE: The Judge didn't say a case like that.
15 He said any other cases.

16 THE COURT: Go ahead with the question.

17 BY MR. SPRINGSTEAD:

18 Q Okay. But there have been no other cases like this,
19 is that correct. any homicide cases where you had to go
20 transport?

21 A I have transported prisoners.

22 Q How many times have you been involved in the
23 transportation of a prisoner, though, while acting in the
24 capacity of a detective on the case?

25 A As a detective on the case?

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1 Q That's correct.

2 A Twice.

3 Q Twice. This case and one other case?

4 A I just know I've gone to Alachua County for one and
5 picked him up and brought him back. I can't recall his name.

6 Q On that particular case when you went to Alachua
7 County, did you have a pre-prepared waiver on your person
8 when you went to pick him up in Alachua County?

9 A No, sir, I did not.

10 Q So when you told the Judge that you did this case
11 like you've done all the other cases, that wasn't true, was it?

12 A Yes, it was.

13 Q Well, then, how do you reconcile that statement
14 with what you just said, that you didn't have a pre-prepared
15 waiver?

16 A Because you didn't ask me about specifics since
17 I've been a detective. I've been an investigator with the
18 sheriff's department for a total of two months. I have been
19 with the sheriff's department here for seven years. I have
20 been with the detention facility for four years prior to that.
21 I have been transporting prisoners for a period of 11 years.

22 Q But the point is -- and, you know, I'm not trying to
23 put you on the spot. I apologize if I've been, you know,
24 aggressive on that point but, reasonably stated, on the other
25 cases that you were involved as a detective on the case

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A-74

1 and you went to transport the individual suspect from
2 Alachua County to Putnam County, you did not take with you a
3 waiver for him just in case he wanted to make a statement to
4 you in transit, did you?

5 A No, sir.

6 Q Okay. So, therefore, you can correct your response
7 to the Judge by indicating that you didn't do this one exactly
8 like all the rest, did you?

9 A I had nothing to do with this waiver form, sir.
10 I did not make it out. I did not review it. I knew it was
11 present and it was at the instructions of the chief of
12 detectives that it be made out and carried with us.

13 Q But you will concede, sir, that that waiver was a
14 part of this transfer that you were involved with.

15 A It was part of my instructions for this transfer,
16 yes, sir.

17 Q Officer Hord, did you ever transfer prisoners in any
18 other capacity other than being a detective?

19 A Yes, sir.

20 Q Okay. How many times did you carry waivers with you
21 on those instances?

22 A None.

23 MR. SPRINGSTEAD: No further questions, Your Honor.

24 MR. McCABE: Your Honor, just so I can make sure
25 that this horse is dead, I'm going to beat it some more.

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REDIRECT EXAMINATION

BY MR. McCABE:

Q Detective, are you generally a friendly person?

A I try to be.

Q Is Sergeant Bakker generally a friendly person?

A Yes, sir, he is.

Q On the way back from Charlotte County, were you anything other than yourself in talking with Mr. Henderson?

A No, sir.

Q Were you deliberately friendly?

A No, sir.

Q Were you rude? Anyone tell you to be mean and nasty and be rude?

A No, sir.

Q Now, on these other cases where you transported prisoners since you've become a deputy sheriff, you always carry your rights card with you?

A Yes, sir, I do.

Q If someone wants to talk to you, can you read them their rights off of the rights card?

A Yes, sir, I do.

Q Have pretty much the same rights as this written waiver does?

A Yes, sir.

MR. McCABE: That's all I have.

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1 MR. SPRINGSTEAD: Just one moment, Your Honor.

2 RECROSS-EXAMINATION

3 BY MR. SPRINGSTEAD:

4 Q Officer Hord, you indicated you spent the night on
5 the road between Putnam County and Charlotte County. Is that
6 correct?

7 A Yes.

8 Q Where did you spend the night?

9 A At Detective Sergeant Bakker's mother's home in
10 St. Petersburg.

11 Q Did you request any per diem that night from the
12 sheriff's department?

13 A No, sir.

14 MR. SPRINGSTEAD: No further questions.

15 MR. McCABE: No further questions, Judge.

16 THE COURT: All right. Is there any need to call
17 any of the other Putnam County officers?

18 MR. McCABE: No, sir. Lieutenant Usina is here,
19 but I don't think we need to call him.

20 THE COURT: Are any of them going to be called by
21 the defense?

22 MR. SPRINGSTEAD: No, Your Honor. I think that the
23 evidence on some of these issues, they presented it.

24 THE COURT: All right. Y'all are all released from
25 process, and you can go back before Judge Eastmoore gets

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Date 1 Feb 62Time 1542 hrs.

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER

I have read the statement of my rights shown above. I understand what my rights are. I am willing to answer questions and make a statement. I do not want a lawyer. I understand and know what I am doing. No promises or threats have been made to me and no pressure of any kind has been used against me.

I am aware that my attorney, in Charlotte County Florida, has instructed me not to speak with Law Enforcement Officers. I am also aware of my Constitutional Rights to disregard the instructions of my attorney and to speak with the Officers from Putnam County, Florida. I wish to exercise my rights and to speak with these officers.

Signed Robert D. Henderson

Witness _____

Witness [Signature]Time 1543 hrsR. W. BokkeJoe AndersonRosalind Bayle Clark

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires June 29, 1965

EXHIBIT "B"

L-100-2010

(i) (oupte)

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1 Hernando County cases at the time of the appointment.
2 While the Public Defender might have been de facto
3 representing the Defendant, I don't think they de jure
4 represented him. I don't know if that makes a
5 difference in any event since it's conceded Detective
6 Perez knew -- I don't think anybody hardly knew -- that
7 the Public Defender had been appointed. They certainly
8 took no action. But I don't think that alters the
9 Court's ruling on the Motion.

10 MR. SPRINGSTEAD: I assume the Court did take
11 judicial notice of those matters I asked you to take
12 judicial notice of.

13 THE COURT: Correct. Motion denied.

14 MR. SPRINGSTEAD: Your Honor, at this time we
15 would like to present factual evidence on the Motion
16 to Quash the Venire filed in this cause by counsel for
17 the defense on November 15, 1982. In support thereof,
18 we would call Assistant Deputy Clerk, Mrs. Debbie
19 Manus. Is that correct?

20 MS. MANUS: Yes.

21 MR. SPRINGSTEAD: Ask she be sworn at this time.

22 MR. MCCABE: I'm going to -- Mr. Springstead
23 indicated -- based on what happened in Hernando County,
24 I would object to matters of time -- reading of the
25 names of the jurors who were excused by the Clerk. I

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1 would stipulate to whatever numbers that they come up
2 with, gross numbers. I think that's the issue, not
3 the names.

4 MR. SPRINGSTEAD: I think possibly for expediency
5 purposes we could have the witness go through her
6 master copy of the venire, indicate to the Court every
7 set of circumstances wherein a person was excused by
8 the Clerk's office and explain those circumstances, and
9 then simply attach a copy of the master venire which
10 shows all of those individuals excused by the Clerk's
11 office.

12 THE COURT: Does the venire have the circumstances
13 on it?

14 MR. SPRINGSTEAD: Yes, sir. It's kind of
15 abbreviations. The record would not be clear without
16 an explanation by the Deputy Clerk.

17 MR. McCABE: We wouldn't want that; would we?

18 MR. SPRINGSTEAD: Not at all.

19 THE COURT: All right. Go ahead.
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21
22
23
24
25

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1 THEREUPON,

2 DEBBIE MANUS,

3 a witness herein, being first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SPRINGSTEAD:

7 Q State your name.

8 A Debbie Manus.

9 Q And your occupation.

10 A Deputy Clerk.

11 Q And where do you work, Mrs. Manus?

12 A Lake County Circuit Court Felony Division.

13 Q What responsibilities do you have regarding that
14 employment?

15 A As far as the jury goes?

16 Q Yes.

17 A Okay. I greet the jury. I take some of the
18 excuses, and we also have another jury clerk who works in
19 the law library who does this, also.

20 Q Do you work under the same guidelines and
21 parameters?

22 A Yes.

23 Q That would be the Order that has been entered by
24 the Chief Judge; is that correct?

25 A Yes.

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1 Q Okay. That Order authorizes you to excuse
2 prospective jurors on certain grounds; is that correct?

3 A Yes.

4 Q And you follow that Order; is that correct?

5 A Yes.

6 Q Okay. You've got before you, I believe, the
7 master copy of the venire that was pulled for this particular
8 case; is that correct?

9 A Yes.

10 Q Okay. I'd like for you to start off with Page 1
11 and just indicate, if you would, how many people were
12 excused prior to this morning by you or the other Deputy
13 Clerk who has that same responsibility?

14 A Two of them, Number 7 and Number 8.

15 Q And the reason?

16 A Number 7 was non-service, didn't receive it in
17 the mail or it came back to us. Number 8, eighty-four years
18 old.

19 MR. McCABE: For the purpose of clarification,
20 the witness should be instructed that non-service is
21 not an excuse, and those jurors should not be counted
22 in the gross figures.

23 THE COURT: I think that would be the best.

24 BY MR. SPRINGSTEAD:

25 Q Your master venire any name that has H.S. beside

1 it would be specifically non-service; is that correct?

2 A Correct.

3 Q Let's eliminate those from running down the list.

4 Turn to Page 2.

5 A Okay. Number 19 is a dentist.

6 Q And he was excused by you?

7 A Yes.

8 Q Everybody you're going to name has been excused
9 by you --

10 A Or by the other girl.

11 Q Okay.

12 A Number 31, seventy-five years old. Thirty-three,
13 deceased. Number 34 was reset to December 6.

14 Q Would you explain what "reset" means?

15 A A reset is when we have prospective juror called
16 in and they can't make it for this particular date, we can
17 reset them for another day.

18 Q That reason would be just inconvenience or things
19 of that nature?

20 A Hardship or they are going to be out of town.

21 Q Okay. So inconvenience, out of town, family
22 hardship.

23 A I don't have the particular reasons why because
24 the other girl did this.

25 Q Okay. That's what reset would mean; is that

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1 correct?

2 A Right.

3 Q Okay.

4 A Number 36, seventy-eight years old. Okay. I
5 forgot one, same page, Number 26, I excused her this
6 morning. She came. She's an expectant mother. She looked
7 about six-months pregnant. Number 44 has a doctor's
8 excuse, quadriplegic. Forty-three, reset to February 22,
9 1983.

10 Q That would be the same reason earlier described
11 about reset?

12 A Yes. Number 46, seventy-six years old. Number
13 50, seventy-six years old. Fifty-six, seventy-one years
14 old. Fifty-eight, reset, January 10, 1983. Sixty,
15 seventy-eight years old. Number 70, they have moved to
16 out of county. Seventy-one, doctor's excuse, back problems.
17 Seventy-three, eighty years old. Seventy-five, seventy-
18 seven years old. Seventy-eight, eighty years old. Eighty,
19 deceased. Eighty-one, seventy years old. Eighty-six,
20 seventy years old. Eighty-seven, seventy-four years old.
21 Eighty-nine, deceased. Ninety-one, back problem, doctor's
22 excuse. Ninety-nine, seventy-seven years old. One hundred,
23 excused per Judge Aulls.

24 Q Do you know why that particular individual --

25 A Pam Woodworth was her name, the other jury Clerk.

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1 Q One sixteen?

2 A One sixteen, deceased. One twenty-five, moved out
3 of county. One twenty-seven, reset, March 7, 1983. One
4 twenty-eight, seventy-one years old. One thirty-one,
5 eighty-six years old. One thirty-four, child under ten.
6 One forty-two, seventy-two years old. One forty-three was
7 excused by Judge -- Judge Huffstetler. One forty-six,
8 doctor's excuse, medical. One forty-seven, reset to
9 February 7, 1983. One forty-nine, seventy-one years old.
10 One fifty, doctor's excuse. One fifty-three, eighty years
11 old. One fifty-five, eighty-six years old. I'm sorry,
12 that was -- one fifty-five was eighty-six years old. One
13 fifty-six, medical, doctor's excuse. One sixty-five,
14 moved to Duval County. One sixty-eight, eighty-one years
15 old. One seventy-three, deceased. One seventy-four, small
16 child. One seventy-five, excused per Judge Huffstetler.
17 One seventy-six, doctor's excuse for medical reasons. One
18 seventy-seven, excused per Judge Huffstetler. One seventy-
19 eight, child under four. One seventy-nine, reset to
20 January 10, 1983. One eighty-one, seventy-six years old.
21 One eighty-two, excused per Judge Huffstetler. One eighty-
22 four, husband in the military and is living in New York now.

23 Q Excuse me?

24 A Husband is in military and is living in New York
25 with her husband.

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One eighty-five, seventy-four years old. One
eighty-seven, seventy-two years old. One eighty-eight,
small children under twelve. One ninety, medical, doctor's
excuse. One ninety-two, reset, March 7, 1983. Two hundred,
physician at Lake County Jail. Two 0 six, small child
under ten. Two 0 seven and two 0 eight, both reset for
March 14, 1983. Two 0 nine, seventy-three years old.
Two eleven, reset to December 6th. Two one three, reset
to January 10, 1983. Two fifteen, doctor's excuse, medical.
Two seventeen, seventy-five years old. Two twenty-five,
a hundred percent disabled veteran. Two twenty-nine,
seventy-three years old. Two thirty-one, reset, December 6,
1982. Two thirty-seven, reset December 6. Two thirty-eight,
excused per Judge Aulls. Two thirty-nine, deceased. Two
forty, reset to December 6. Two forty-four, reset to
December 13. And I excused one forty-six. The woman
called yesterday and said she had polio, she had no way of
getting here because of that. She couldn't get a doctor's
excuse here on time. She would send one in.

Q These people call in on these matters, and they
advise you over the telephone their reasons for not being
able to serve. Do you make a decision at that time?

A If it falls under the Memo that we have from
Judge Aulls.

Q In other words, these people would not be placed

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1 under oath in any way before they give you this information.

2 A No.

3 Q Okay. One other question regarding the reset.

4 Would you please explain again all the reasons that you --
5 you know, that a reset would be appropriate?

6 A That they are going to be out of town. You have
7 a lot of that with people that come down from the north that
8 are going to be away for a while, and if they tell you on
9 the phone, it's physically impossible for them to get here
10 right today, we do allow them to reset them for another day.

11 Q Any other reasons other than that?

12 A Not that I know of. You might have to ask the
13 other Clerk.

14 MR. SPRINGSTEAD: May I have a moment, Your Honor?

15 THE COURT: Certainly.

16 BY MR. SPRINGSTEAD:

17 Q Mrs. Manus, was any effort made to contact the
18 trial judge regarding excusing the doctor and physician?

19 I believe there were two doctors and one dentist. No, there
20 was one doctor and one dentist.

21 A One dentist. There was a doctor at Lake County
22 Jail.

23 Q So there were two doctors and one dentist, right?

24 MR. McCABE: One was a doctor.

25 THE COURT: There was a dentist and a doctor.

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1 MR. McCABE: Jail doctor.

2 THE WITNESS: The guy from the jail which I
3 believe was a doctor. The dentist was Number 19.

4 THE COURT: Was the doctor a resident or just
5 passing through the county jail? That was 200, Forrest
6 Smith. Just says, "Physician at Lake County Jail."

7 BY MR. SPRINGSTEAD:

8 Q Was the Judge contacted regarding those two
9 individuals?

10 A I wouldn't know. I didn't do these two.

11 Q Do you know exactly the number of individuals
12 who were excused before this morning's proceedings, not
13 counting, of course, the no shows, non-service parties. Just
14 the individuals that were excused by the Clerk's office?

15 A I'd have to count them up.

16 THE COURT: Count them up.

17 MR. SPRINGSTEAD: I would ask that while she's
18 counting, she omit the deceased people who were excused.

19 THE WITNESS: You don't want me to count the
20 no service?

21 MR. SPRINGSTEAD: Don't count those and don't
22 count the dead people.

23 THE WITNESS: How about the resets? Do you want
24 me to count those?

25 MR. SPRINGSTEAD: Yes.

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1 THE WITNESS: Sixty-eight.

2 BY MR. SPRINGSTEAD:

3 Q There were sixty-eight excusals prior to this
4 morning's proceedings. And were two hundred fifty summonses
5 sent out?

6 A Yes.

7 Q How many potential jurors checked in this morning?

8 A A hundred twenty-one.

9 MR. SPRINGSTEAD: No further questions of this
10 witness, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. McCABE:

13 Q Do you follow the Judge's orders as best you can?

14 A Yes.

15 MR. McCABE: Thank you. That's all.

16 THE COURT: Any other rebuttal or anything of
17 that sort?

18 MR. SPRINGSTEAD: Your Honor, we'd call Pam
19 Woodworth. I believe she's in the law library.

20 MR. McCABE: Maybe I can stipulate. What is it
21 you want?

22 MR. SPRINGSTEAD: We'd like to know whether she
23 contacted any of the judges regarding any of the
24 excusals, what the reason or reasons were for the
25 excusals, and checking on potential jurors.

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1 MR. McCABE: These are set procedures set in more
2 populous counties. You can call in and say I can't be
3 there and they will be reset. The only stipulation --
4 they only reset any of them if the folks can't be there
5 that day or don't want to be there, and I'll stipulate
6 they don't contact the Court about the dentist or the
7 doctor.

8 MR. SPRINGSTEAD: If the State will stipulate,
9 we won't call her.

10 THE COURT: Any other witnesses?

11 MR. SPRINGSTEAD: No, Your Honor, we don't have
12 any witnesses. Prepared to argue.

13 THE COURT: Go ahead with the argument.

14 MR. SPRINGSTEAD: The argument is simply set forth
15 in the Motion, the last paragraph, 18, which specifical-
16 ly states that the exercise of the excusal power by
17 the Clerks is illegal in violation of the statutory
18 provisions and the division of power set up by the
19 Constitution and by the statutes, Your Honor. The Clerk
20 obviously does not have the legal authority to excuse
21 any of these individuals under these circumstances,
22 that authority is based solely with the trial judge.
23 And we would submit that any delegation of that
24 authority to the Clerk's office which would allow them
25 to in fact excuse these individuals before they are

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1 required to come in and participate in the proceedings
2 like we have had this morning which the Defendant is
3 entitled to as a matter of law to participate in, is
4 improper, and we think the Motion to Quash the Venire
5 should be granted.

6 THE COURT: Could you be more specific with your
7 allegations as to the procedure?

8 MR. SPRINGSTEAD: I can cite the paragraph in the
9 Order, Your Honor. I'd like to simply state that
10 Florida Statutes Section 40.143, the reasons that may
11 disqualify a juror for service, one, sub five,
12 prospective jurors must satisfy this specific require-
13 ment, practicing attorney, practicing physician or
14 person physically infirm may be excused from jury
15 service and may be excused by the presiding judge.
16 The remainder of Section 40.143 goes to who has the
17 authority to excuse them. Under 4.02 of Florida
18 Statutes, 1979, the duties of the Clerk of the Court
19 relative to prospective jurors does not expressly grant
20 the Clerk of the Court the authority to grant excusals
21 of any prospective jurors under any circumstances. The
22 Administrative Order entered in this particular
23 jurisdiction by the Chief Judge confers authority on
24 the Clerk in situations -- in all situations except
25 hardship -- from the Judge to the Clerk, and we submit

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1 that's an illegal designation of the duties reserved
2 to the trial judge, and those are duties and
3 responsibilities that should be exercised once the
4 jury has been called in and they are, therefore,
5 released from jury service in the presence of the
6 Defendant for the lawful reasons made by the statute.

7 MR. McCABE: Briefly respond, Your Honor. The
8 section dealing with the reasons for getting out of
9 jury service, you are seventy, have kids under fifteen
10 and so forth, that section merely states those people
11 may be exempt from jury service. It doesn't say who
12 exempts them or anything like that. Again, in some
13 circumstances, this is done strictly by mail. A form
14 is sent back. If you check the block over seventy,
15 they don't even bother to summon you for jury service.
16 There is nothing in there that says the Court has to
17 do that. There is no prohibition against the Court
18 delegating whatever authority. This is down to a
19 ministerial task which is the Clerk's office. The
20 Clerk is supposed to perform this. Hardship excuses
21 are discretionary excusals dealt with by the Court.
22 The terms of the statute have been met.

23 MR. SPRINGSTEAD: Brief response. I submit that
24 doctors and not dentists are exempt from the provision
25 that Mr. McCabe noted. A dentist has been excused by

1 the Clerk's office in this cause. I'd also like to
2 point out -- reiterate -- none of these other people
3 who are excused by the Clerk's office ever had to say
4 anything under oath as the individuals who came in here
5 today. They were placed under oath, and then asked
6 these questions, and the information elicited from
7 them. Therefore, the statements made to the Clerk were
8 not even verifiable or the people cannot be held
9 responsible for the truth of the statements they made.

10 THE COURT: Motion to Quash the Venire is denied.
11 Any other motions before we recess for lunch and start
12 with the voir dire?

13 MR. SPRINGSTEAD: That would be fine, Your Honor.

14 THE COURT: Court will be in recess until 1:30.

15 (Court recessed at 12:00 o'clock and reconvened
16 at 1:30.)

17 (The following proceedings were held outside the
18 presence of the prospective jurors commencing at 1:30
19 p.m. Bernard McCabe, Esquire, is present for the State;
20 John Springstead, Esquire, and T. Michael Johnson,
21 Esquire, are present for the Defendant. The Defendant
22 is present.)

23 THE COURT: Do we have anything we need to do
24 before we call the first twelve members of the jury?

25 MR. McCABE: No, Your Honor.

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CHAPTER 40

JURORS AND PAYMENT OF JURORS AND WITNESSES

- 40.01 Qualifications of jurors.
- 40.013 Persons disqualified or excused from jury service.
- 40.015 Jury districts; counties exceeding 50,000.
- 40.02 Selection of jury lists.
- 40.221 Drawing jury venire.
- 40.225 Drawing jury venire; alternative method.
- 40.23 Summoning jurors.
- 40.231 Jury pools.
- 40.235 Juror accommodations.
- 40.24 Pay of jurors.
- 40.26 Meals for jurors.
- 40.271 Jury service.
- 40.29 Clerks to estimate amount for pay of jurors and witnesses and make requisition.
- 40.30 Requisition endorsed by Comptroller and countersigned by Governor.
- 40.31 Comptroller may apportion appropriation.
- 40.32 Clerks to disburse money.
- 40.33 Deficiency.
- 40.34 Clerks to make triplicate payroll.
- 40.35 Accounting and payment to the Comptroller.
- 40.41 Petit jurors; length of service.

40.01 Qualifications of jurors.—Jurors shall be taken from the male and female persons at least 18 years of age who are citizens of this state and who are registered electors of their respective counties.

History.—s. 2, ch. 4015, 1981; ss. 1, 2, ch. 4122, 1983; CS 1570, 1971; s. 1, ch. 6531, 1913; RGS 2771, 2772; ss. 1, 2, ch. 13060, 1977; CGL 4443, 4444; s. 1, ch. 29176, 1949; ss. 1, chs. 38414, 38481, 38448, 1981; ss. 1, 2, ch. 87-154; s. 1, ch. 75-78; s. 1, ch. 79-323.

40.013 Persons disqualified or excused from jury service.—

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury, larceny, or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror.

(2) Neither the Governor, nor any Cabinet officer, nor any sheriff or his deputy, municipal police officer, clerk of court, or judge shall be qualified to be a juror.

(3) No person interested in any issue to be tried therein shall be a juror in any cause; but no person shall be disqualified from sitting in the trial of any suit in which the state or any county or municipal corporation is a party by reason of the fact that such person is a resident or taxpayer within the state or such county or municipal corporation.

(4) Expectant mothers and mothers who are not employed full time with children under 15 years of age, upon request, shall be excused from jury service.

(5) A presiding judge may, in his discretion, excuse a practicing attorney, a practicing physician, or a person who is physically infirm from jury service.

(6) A person may be excused from jury service upon a showing of hardship, extreme inconvenience, or public necessity.

(7) A person who has served as a juror in any court in his county of residence within 2 years of the first day of January in the calendar year for which he is being considered may, upon request and submission of a sworn affidavit that such service has been rendered, be excused from jury service.

(8) A person 70 years of age or older shall be excused from jury service upon request.

History.—s. 2, ch. 3010, 1977; s. 1, ch. 4015, 1981; RS 1549; CS 1572; RGS 2774; CGL 4451; s. 2, ch. 38448, 1981; s. 7, ch. 73-334; s. 1, ch. 77-102; s. 1, ch. 77-431; s. 4, ch. 79-325; s. 1, ch. 80-170.

Note.—Former s. 40.07.

40.015 Jury districts; counties exceeding 50,000.—

(1) In any county having a population exceeding 50,000 according to the last preceding decennial census and one or more locations in addition to the county seat at which the county or circuit court sits and holds jury trials, the chief judge, with the approval of a majority of the circuit court judges of the circuit, is authorized to create a jury district for each courthouse location, from which jury lists shall be selected in the manner presently provided by law.

(2) In determining the boundaries of a jury district to serve the court located within the district, the board shall seek to avoid any exclusion of any cognizable group. Each jury district shall include at least 6,000 registered voters.

History.—s. 1, ch. 76-114; s. 2, ch. 79-323.

40.02 Selection of jury lists.—

(1) The chief judge of each circuit, or a circuit judge in each county within the circuit who is designated by the chief judge, shall request the selection of a jury list in each county within the circuit during the first week of January of each year, or as soon thereafter as practicable. The chief judge or his designee shall direct the clerk of the court to select at random a sufficient number of names, with their addresses, from the list of persons who are qualified to serve as jurors under the provisions of s. 40.01 and to generate a list of not fewer than 250 persons to serve as jurors, which list shall be signed and verified by the clerk of the court as having been selected as aforesaid. A circuit judge in a county to which he has been assigned may request additional jury lists as necessary to prevent the jury list from becoming exhausted. When the annual jury list is prepared pursuant to the request of a chief judge or his designee, the lists prepared the previous year shall be withdrawn from further use. If, notwithstanding this provision, some names are not withdrawn, such error or irregularity shall not invalidate any subsequent proceeding or jury. The fact that any person so selected had been on a former jury list or had served as a juror in any court at any time shall not be grounds for challenge of such person as a juror. If any person so selected shall be ascertained to be disqualified or incompetent